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ABSTRACT

This descriptive study reports on the delivery of educational services to and resources for emotionally handicapped children in the city of New York. Data were gathered from observations of public and private programs and from interviews with administrative personnel from these programs. Section 1 provides an overview of the children, the law, and the system. Section 2 provides a background addressing such topics as the number of children in need of special and educational services and the programs that are available. Section 3 describes the system of identification and supportive services, covering such aspects as the organizational framework of educational programs, decentralization, identification, diagnosis, evaluation, and supportive services. Section 4 covers the public sector (Board of Education programs) focusing on special classes, pilot programs, special day schools for the socially maladjusted and emotionally disturbed, other centrally administered programs, district programs, and services for emotionally handicapped students, of high school age. Section 5 concentrates on the quasi-public sector. Conclusions included in the final section note an insufficiency of programs, the inadequate quality of services, discrimination, fragmentation, and lack of accountability. Recommendations are made in each of these areas. (AM)

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LOST CHILDREN

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William J. Jesinkey
Jane R. Stern

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A Descriptive Study of the System for the Education of Emotionally Handicapped Children in the City of New York

(Study conducted between
July 1972 and June 1974)

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William J. Jesinkey

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Alternative Solutions for
Exceptional Children Inc.

UD 015 487

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FOREWORD

The genesis of this descriptive study on the delivery of educational services to emotionally handicapped children in the City of New York was the authors' experience in acting as advocates for emotionally handicapped and similarly handicapped children in New York City. In 1970, the authors -- along with other educators, parents, advocates, and concerned citizens -- formed Alternative Solutions for Exceptional Children (ASFEC), an organization devoted to creating services and acting when needed as a representative for such children. Since that time, ASFEC's direct services have included a school for emotionally handicapped children, almost all of whom are poor, and most of whom had previously been excluded from both the public and private school systems; an affiliate special education program which functions within a regular private high school for boys who are graduates of one of the public school system's "600" elementary schools; and ASFEC plans to open a community based residence in the fall of 1974.

All these programs are located in the Astoria area of Queens. ASFEC in its advocacy role provides representation of children on an individual basis and works toward the resolution of problems common to many children.

Most of the children whom we have served have been poor minority children, many of whom lack family resources altogether. We have found that these children, far from being provided with an educational program appropriate to their needs, have typically been excluded from school, placed in custodial programs geared toward controlling socially unacceptable behavior but not equipped to overcome the child's handicapping limitations; or barely tolerated in regular public school programs which lack the resources needed to help such children, and where they continually disrupt the education of others. We saw these children on a treadmill which too often included dropping out of school, functional illiteracy, anti-social acts, police and court involvement, and incarceration or other institutionalization.

At the same time we were aware that there was a growing body of law affirming the educational rights of handicapped children, which during the course of this study culminated for New York City in the milestone determination of the New York State Commissioner of Education in the Matter of Riley Reid,1) holding that as a matter of New York State Law and public policy "all handicapped children must be provided with adequate educational services." As we saw it, the Reid case and other legal statements of the rights of handicapped children might be a pathway toward providing quality education services for the children whom we represent. We felt, in approaching this study, that the initial need was not so much for an analysis of legal rights, mainly because substantial thoughtful work has been done elsewhere,2) but rather for a total analysis of New York City's system for the education of emotionally handicapped children, and particularly of the impact of that system on the child from the family which lacks resources.

The study itself was conducted by William Jesinkey, Executive Director of ASFEC, who previously has been a teacher and an attendance teacher in the New York City Public School system, and a teacher and guidance counselor in the City's "600" school system for thirteen years, and by Jane R. Stern, an attorney who is counsel to ASFEC. In this research project they were aided by Nancy Graham and Grace Murphy as research and editorial assistants, and Elaine Keith and Miriam Thompson who provided field research. Final editing was done by Zeb Delaire. The study was carried out over a two-year period, from July 1972 to June 1974.

The methodology of the study which was not complex, was to interview and gather data from the personnel who administer the New York City Public School System's programs which service or are involved with emotionally handicapped children, to interview and make observations of an illustrative number of programs within the public and private sector, and to remain in constant contact with developments in New York City in this area of special education. Throughout the body of this report we have cited the principal sources for a topic chapter in the first endnote of that chapter. We have also done a survey of approximately 150 case histories of three advocacy organizations whose work has been interrelated with ASFEC's, the Queens Lay Advocate Service, the Education Action Center (Long Island City, Queens), and the Martin de Porres Ombudsman's Office (Astoria, Queens), covering case histories between 1972 and 1974. References to typical educational experiences of the children in those case histories are included within this report, with identifying characteristics and details altered.

In addition to the Reid Order and its widesweeping effects in New York City, two major reports were issued during the course of this report which are heavily relied on herein: The Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education, 1972 (the Fleischmann Report), in particular Chapter Nine, "Children with Special Needs," which comprehensively describes and makes recommendations on the education of handicapped children in the State of New York; and Juvenile Justice Confounded; Pretensions and Realities of Treatment Services, a report issued by the Committee on Mental Health Services Inside and Outside the Family Court in the City of New York, which describes the lack of suitable residential treatment facilities for children coming through the family court system, and the discriminatory manner in which children receive what treatment there is.

In setting the limits of this descriptive study, we determined that we would focus on educational resources in New York City although we realize that this is only one aspect of these children's needs. Further, we did not cover certain areas, not because of lack of importance or relatedness, but because otherwise the study would have been unmanageable. Thus, residential and summer programs, and programs for pre-school children are not covered,3) and we have not dealt with the problems of or programs for children who are heavily drug involved, nor the issue of reliance on drug treatment for emotionally disturbed and minimally brain-injured children.4)

Neither does this report deal with the general issue of the adequacy of the New York City Public School System, nor the valid question of whether, if that system were improved, made more flexible or otherwise changed, special education might be rendered unnecessary in many instances.

What we are reporting is a situation at this moment for children who are handicapped for whatever the cause (and in some cases inappropriate education may have been a contributing factor) and need special education. We do not, however, in any way imply that all children who are suspended, truant or are otherwise excluded from school, or who present behavior or learning problems in school, are emotionally or otherwise handicapped. In fact, we deplore this attitude as relying on a panacea.

We are grateful to the numerous people, both in the private and public sectors, who helped us. A complete listing would result in names too numerous to mention here, but many of whom are listed as resources throughout this report. We would, however, particularly like to acknowledge the assistance of Dr. Helen Feulner, Executive Director of the New York City Board of Education's Division of Special Education and Pupil Personnel Services, who gave us much of her own time and who arranged for personnel within her Division to cooperate with and assist us; to Donald Eisenberg, Executive Assistant to Dr. Feulner; Gloria Lee, Administrator, Special Education Services for Emotionally Handicapped Children; Murray Scharin, Administrative Assistant in the Office of Special Schools; and Elinor Weingast, Supervisor of Guidance, Community School District 15, Brooklyn, and Rosalind Guild, Field Supervisor, Brooklyn, Special Education for Emotionally Handicapped Children (both of whom were patient in introducing us to this aspect of the complex New York City School System); and to Carolyn Heft, Mobilization for Youth Legal Services, Attorney for the Petitioners in the Riley Reid Appeal.

Our special thanks to Angela Vulich, Ruth Gast, Judith Little, and Deborah Morgan who spent many hours and days typing this report, and to Dorothy Jesinkey who coordinated all of us.

This project was made possible through a grant from the John Hay Whitney Foundation, and through the encouragement and aid of Archibald Gillies, President of that Foundation.

Long Island City, New York
June 1974

Endnotes

[1] Matter of Reid, Dec. #8742 (Nov. 26, 1973).

[2] Throughout this report, the references to statutes, cases and possible legal arguments are intended to be suggestive rather than complete legal analyses or sources. For sources on the educational rights of handicapped children see, among others, Patricia M. Wald, "The Right to Education" in Bruce J. Ennis and Paul R. Friedman, eds., Legal Rights of the Mentally Handicapped, vol. II, (New York: Practicing Law Institute, 1973), pp. 831-989; Center for Law and Education, Classification Materials, rev. ed. (Cambridge, Mass.: Harvard University, 1973); Symposium, "The Legal Rights of the Mentally Retarded," Syracuse Law Review, vol.23,No. 4 (1972) pp. 991-1165; Martin A. Schwartz, "The Education of Handicapped Children: Emerging Legal Doctrines," Clearinghouse Review, vol. 7, No. 3 (July 1973), pp. 125-133; Merle McClung, "School Classification: Some Legal Approaches to Labels," Inequality in Education, No. 14 (July 1973), pp. 17-37; David L. Kirp, "Schools as Sorters: the Constitutional and Policy Implications of Student Classifications," University of Pennsylvania Law Review, No. 121 (April 1973), pp. 705-797; David Kirp; William Buss and Peter Kuriloff, "Legal Reforms of Special Education: Empirical Studies and Procedural Proposals," Calif. Law Rev. Vol. 62, No. 1 (Jan. 1974) pp. 40-155; "The Right of Handicapped Children to an Education: The Phoenix of Rodriguez," Cornell Law Rev. Vol. 59, No. 3 (March 1974) pp. 519-545.

[3] For a practical handbook on services for handicapped children in day care programs in New York City, see Ruth B. Sauer, Handicapped Children and Day Care (New York: Bank Street College of Education, December 1973).

[4] For a review of the research on the effects of amphetamine therapy on school age children and a critique of the use of such drugs in the schools see Lester Grinspoon and Susan B. Singer, "Amphetamines in the Treatment of Hyperkinetic Children," Harvard Education Review, Vol. 43, No. 4 (Nov. 1973).

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SECTION I

INTRODUCTION - AN OVERVIEW

INTRODUCTION - AN OVERVIEW

THE CHILDREN[1]

William

William is a depressed 12 year-old Hispanic child, who is small for his age, the next youngest of five children. He lives with his parents and two of his sisters in a housing project in the Bronx. His father is disabled and his mother works as a waitress to support the family. There is bitter fighting in the home. As early as second grade, William began to fall behind in school, although he has normal intelligence. In third and fourth grade he began to truant, and when in school he provoked fights and was reported to have accosted younger children for money. William was transferred from class to class within the school, but except for one hour a week of corrective reading, he was given no special help; he was not referred to the Bureau of Child Guidance or to any other source for evaluation. Twice while he was truanting he got involved with older boys in incidents which brought him in contact with the police, but no formal charges were made.

As soon as he was old enough (10), personnel at the school decided to send him to a Special Day School for socially maladjusted and emotionally disturbed boys ("600" school). His mother, who was persuaded that this would be a better program for him, agreed. William was not evaluated clinically prior to placement in this Special School. He was the youngest and smallest child at the school, which was located one hour and three bus trips from his home. He went to school for the first week. The second week, William, who said he was afraid of the older, larger boys in the school, rode the subways. Within that week he had gotten involved with a group of boys in a serious incident reported to the police youth division. William returned to school, but within a week re-commenced to truant. Although the special school has an aggravated truancy problem, it has no attendance teacher, and no one else in the school was able to handle this problem. The Special School has clinical services on a part-time basis, but during the six months William was in the school, neither clinician had time to see him.

Through an advocate William was recommended to a small private school. In desperation his mother asked the school to take him, even though the City and State refused him a tuition grant (made available to some 4,300 children in New York City to attend private special education schools) because they claimed he was adequately served in the public Special Day School. William's new school put a strong emphasis on academic achievement, and William had the assistance of a reading specialist. He was evaluated by a psychologist and psychiatrist, who found him to be emotionally handicapped and who worked with his teacher to give her an understanding of William's particular needs. A social worker has been in close contact with his mother. William is provided with door-to-door transportation in a carrier van. On the several occasions when he has begun to truant, someone from the school has gone to his home and, if necessary, has gone out to find him. William's reading level has improved, even though he still tends to be uninvolved in school and fearful. He has not, however, been involved in any anti-school incidents or disruptive incidents in school, and he has had no further contact with the police.

Anthony

Anthony is a deeply disturbed 16 year-old Black adolescent who has not been in school for three years. He spends most of his time in his family's apartment in Brooklyn, because his parents do not want him out wandering the streets. Whatever academic skills he had acquired while in school have deteriorated during these years. Anthony lives with both of his parents and two younger sisters. His father is a bus-driver; his mother has had to leave her job as a school-aide to stay home with Anthony (in order to receive home instruction, there must be an adult in the house).

Anthony began to have noticeable school problems in the third grade; he learned to read, but could not cope with math. He became disruptive in the classroom, running around the room and calling out. At other times he was completely taciturn. He was evaluated by the Bureau of Child Guidance, who found him to have at least normal intellectual capacities but to be impeded by a maladjusted outlook. Special education was not recommended, nor were any programs available. When Anthony entered junior high school he did not behave disruptively; but although he attended regularly, he withdrew from all social contact and academic participation. After he failed all his subjects, the school guidance counselor at the end of the school year referred him to a mental hygiene clinic, which evaluated him, found him to be severely disturbed and put him on medication. When his behavior continued to deteriorate during the next school term, the clinic referred him to a psychiatric hospital for an in-hospital evaluation. The hospital, on discharge, reported him to be severely disturbed and deteriorating, with possible neurological impairment. Continued medication and an intensive special education program were recommended; instead, Anthony was placed on home instruction. Anthony has never been placed in a special education program, and no public or private program is now available for him. The public sector classes for the emotionally handicapped high school students have room for only 16 students, and there are no classes at all in Brooklyn. Now his family is looking into residential placement for Anthony (although they would rather have him at home) just to get him into a school. No clinician, however, has felt that placement as such was necessary. Although no one in the public sector is helping him find placement, the Bureau of Social Welfare has said that they will pay the costs if a residence accepts him.

Diana

Diana is an eleven-year old pseudo mature white girl who lives in Brooklyn. Her twenty-seven year old mother, Alice, is a drug addict; Diana has never seen her father. Because of her mother's irresponsibility, Diana has taken over much of the responsibility for herself and her younger brother. Her aunt, who has a family of her own, comes to the house every few days to try to help but she is unable to have the children live with her and finds it hard to countermand Alice's authority. Alice has tried to involve Diana in shoplifting and other illegal activities, and Diana is in constant conflict with her. Diana likes school; however, because of her home conditions she is often late, or absent, or comes to school hungry and tired. Underneath her seeming self-possession, she is depressed and anxious. Despite the fact that she has above-average intelligence, she is more than two years retarded in reading. Because of her reading retardation she has been placed in [illegible] "bottom" class, where expectations are low. Diana is acquiring a poor self-image and has begun to feel she cannot learn.

Because Diana presents no behavior problems -- in fact she is helpful and polite -- the school has not identified her as a child in need of help. Thus, because she does not behave aggressively, Diana has not been referred to either the school guidance counselor or part-time psychologist, and has not been identified as emotionally handicapped. However, even if the school did recognize her needs, the only special education program for emotionally handicapped children in her school district are several special classes populated principally by boys with severe behavior problems which have no clinical or other supportive services.

Diana does not need isolated educational placement. What she does need is attention, strong supportive counselling, and intensive remediation in reading. In due time, a social worker or counselor in the school working with her and her mother might find it necessary to seek other placement for her, hopefully within her own family.

Eddie

Eddie is a ten year old boy who is Black. He has lived for the past two years with his older sister and her husband in a run-down area of Queens. His mother died when he was two and his father is in the Merchant Marine. His sister would like to help him. She has already seen two of her other brothers incarcerated; one is now in Riker's Island, the other is in a State Training School.

Eddie started school in the first grade. From the beginning, his behavior was uncontrolled. He was hyper-active and disruptive, and would fly into a rage at the smallest provocation. Although he has been found to have normal intelligence, he did not learn to read. The school placed him for a short time in a "guidance class" run within the school, but his adjustment did not improve and he spent most of his days in the guidance office.

At the age of eight, with the cooperation of his sister, Eddie was referred to a mental health clinic where he was diagnosed as both neurologically impaired, with severe perceptual problems, and emotionally handicapped. Since there was no appropriate program for him he was put on home instruction. However, the home-instruction teacher was unable to tolerate his behavior and so even that instruction was discontinued. Last year, after many months of waiting, Eddie was evaluated by the Board of Education's Evaluation and Placement Unit, but that unit was unable to find a place for him, so he remained at home.

Eddie's behavior is too disturbed to be acceptable in the classes for the brain-injured; and the classes for the emotionally handicapped that are available in his area do not have sufficient services to cope with problems of this intensity. The only other alternative available, now that Eddie is ten, is a Special Day School. That particular program, however, is not appropriate for him. He would not be able to adjust to the group instruction situation and the class changes. The heavy emphasis on shop would be unsuitable and, in fact, frustrating to a child with his perceptual and coordination problems, and a competitive gym program would be a disturbing stimulus rather than therapeutic.

Eddie's sister is now working and therefore she must order him to stay in the house during the day. But he is beginning to defy her, and it is only a matter of time before he gets into deep trouble. Unless an appropriate program is available soon, it is inevitable that Eddie will be institutionalized.

THE LAW

Under New York State law and public policy, children between the ages of 5 and 21, like William, Anthony, Diana and Eddie, are clearly entitled to a special education program suited to their needs. Article 89 of the New York State Education Law provides that school boards, such as the Board of Education of the City of New York, are required "to furnish suitable educational fac lities for handicapped children" [N.Y. Educ. Sec. 4404 (2)(a)]. A "handicapped child," as defined under State Law, "is one who, because of mental, physical or emotional reasons, cannot be educated in regular classes but can benefit by special services and programs. . ." [Sec. 4401(1)]. Since 1966, that requirement has included emotionally handicapped children. If the meaning of that mandate was ever in doubt, its meaning has been re-affirmed by the State Commissioner of Education in his holding in the Reid 2) case, that all handicapped children be provided with adequate educational services. Section 4404 further provides, and Reid reaffirms, that where 10 or more handicapped students, who can be grouped homogeneously, require special educational programs, classes must be established for those students, either by the Board or through contracting with private agencies for the education of such children. 3)

Furthermore, there have been a series of significant events within this state which have created a momentum toward providing a system of educational services for emotionally handicapped, as well as other handicapped children.

In the fall of 1972, the Fleischmann Commission on the Quality, Cost and Financing of Elementary and Secondary Education issued its report on "Children with Special Needs,"4) a comprehensive report on the education of handicapped children within this state. The Fleischmann Report brought to the forefront the fact that "[t]here are large numbers of these children in New York State who are not now adequately served by our educational system,"5) and made a series of recommendations "[i]n order to (a) identify all children with special needs and to provide a correct diagnosis and learning prescription for them, and (b) provide them with necessary educational services."6) The Report concluded that children with special problems should be educated at public expense, and in recognition of the high cost of such programs, recommended increased state aid for that purpose.

The report of the Regents of the State of New York, The Education of Children with Handicapping Conditions,7) issued in November of 1973, reaffirmed the essentials of the Fleischmann Report stating that "[t]he State and its subdivisions have an obligation to educate these children so they can learn to cope with their own physical, mental or emotional disabilities, as well as with the often limited and stereotyped perceptions of others." The Regents also recommended additional state aid.

In that same month the Commissioner of Education issued his determination in the Reid case, a class action appeal brought by a group of brain-injured New York City children who previously had been excluded from the city school system. After conducting an independent investigation, the Commissioner found that the city had been in violation of the laws and regulations of New York State in respect to the education of handicapped children. The Commissioner has not yet issued his final order in that case, but has issued a sweeping interim order which inter alia provides that all children who have been diagnosed as handicapped be placed immediately in appropriate classes, and that the Board of Education present a plan with respect to various aspects of education of the handicapped.

In May of this year (1974) the New York State Legislature enacted legislation8) which, at least in principle, provides for added funding for education programs for handicapped children. In order for a school district to receive such funding, the district must submit to the Commissioner of Education an acceptable plan for its expected use.9)

Furthermore, the Reid case is part of a nationwide legal movement enforcing the rights of handicapped children to a free public education.10) That trend initiated with a landmark consent decision in a case brought on constitutional grounds on behalf of mentally retarded children, Pennsylvania Association for Retarded Children (PARC) vs. Commonwealth of Pennsylvania,11) and expanded in

Mills vs. Board of Education of the District of Columbia,12) a decision based on statutory and constitutional grounds, for children who had been denied schooling because of alleged behavioral, physical or emotional handicaps or deficiencies. The trend has continued with the consent decree in Federal Court, LeBanks vs.Spears,13)and the decision of a State Court in Maryland Association for Retarded Children (MARC) vs. State of Maryland.14) Furthermore, numerous other cases have been brought in behalf of handicapped children which are in the process of litigation.16) And various states have passed or are considering legislation mandating a "zero reject" policy and public education for all such children17)(as is already legally the case in New York) and otherwise broadening the education rights of the handicapped.18)

THE SYSTEM

Despite these strong statements of public policy, however, emotionally handicapped children are still ill-served under the present system, and the authors submit that these children will continue to be poorly served, even as programs expand, unless fundamental changes are made in the current system. Our observations and descriptions of that system and its shortcomings suggested here in summary are set forth at length in the body of this report.

1) The inability of the system to provide adequate service is first and foremost a product of the grievous lack of educational programs for emotionally handicapped children. There are at least 20,000 school-age children in need of such services and, at most, programs are available for only 7,000. The lack of programs is particularly acute at the high school level; thus, there is no public facility available for Anthony or Eddie. The few appropriate facilities which do exist in the private sector would largely be unavailable to boys like them, who do not come from advantaged circumstances.

2) Beyond that insufficiency of programs, the services which do exist are seriously fragmented and uncoordinated. This is particularly true at the level of identification and placement (Anthony waited for months to be evaluated, the various evaluations were inconsistent, and the diagnostic recommendation for special education was not followed). Fragmentation is also true at other levels. For instance, the community school districts are responsible for public education programs in the elementary and junior high schools, whereas the central authorities are responsible for all special education. Still another authority, the Bureau of Child Guidance, is responsible for clinical services. As a result, Diana's school had no appropriate services to offer her.

3) Further, although the Reid Order and other developments should lead, at least in the long run, to an expansion in the quantity of programs, there is serious question as to the quality of those programs, particulary those which are generally available to poor and minority children. William, for instance, was placed in a special program, a Special Day School (formerly

known as the "600" schools). However, that program lacked the personnel to deal with his primary problems of school phobia and truancy. And the only program which might currently be available for Diana or Eddie does not have even minimal mental health services. Either of these children, or Anthony, might have been fortunate and have been placed in an appropriate, truly therapeutic service within the public or private sector, but these programs only exist on a pilot basis serving a very limited enrollment.

4) And finally, the disturbed disadvantaged child is often not even recognized to be handicapped. Where he is identified at all, it is on the basis of socially disruptive behavior.19) Thus, Diana was not noticed by her school because her behavior was not aggressive, despite the fact that she was deeply troubled and her anxiety was interfering with learning. William was identified because of his anti-social acts. He was placed in a program for the socially maladjusted, primarily to isolate him from disturbing the operations of the regular school system, but that program was not oriented toward his specific needs (in fact, he had never been clinically evaluated). Although the Board of Education has made certain attempts toward making the Special Schools into therapeutic programs, and in fact denominated them as "Special Schools for the Socially Maladjusted and Emotionally Disturbed," the original motive in setting up these schools was to handle the school repercussions of the gang-delinquency period of the mid-1940s, and it is that orientation which carries over to today.

Thus, children like those described earlier in this chapter are lost. Because of insufficiency, fragmentation, and inadequate quality of those services when they do exist, as well as the failure to assess many of these children in terms of their handicapping conditions, they are not provided with the special education which might help them overcome their handicapping emotional and other disabilities. Although the inadequate system fails many children, the greatest damage is to poor and minority group children from families with few if any resources.

THIS REPORT

This report attempts to describe in some detail the system of educational services for emotionally handicapped children, particularly from the view of its impact on children from disadvantaged circumstances. The report follows the following sequence:

Section I - Introduction and overview.

Section II - Summary of the numbers of children in need of services, quantity of the programs provided, and the financing system available to pay the costs of those programs.

Section III - Description of the system for diagnosis, evaluation and placement, and the supportive services available within the regular public school system.

Section IV - Description of the special education programs for emotionally handicapped children administered by the New York City Board of Education, and related public education programs.

Section V - Description of the special education programs administered by the private sector (referred to here as the quasi-public sector because of the heavy reliance on public funding sources).

Section VI - Summary of observations and recommendations.

Endnotes

[1] These case histories and other cases referred to throughout this report are from the records of advocacy organizations (see Foreword); identifying characteristics and details have been altered to disguise identification.

[2] Matter of Reid, Dec. #8742 (November 26, 1973). Beyond the explicit provisions of Article 89 setting forth the educational rights of handicapped children which the Reid determination is based on, there are more general statutory bases and constitutional bases which were not reached in the Reid case for enforcing those rights: e.g., the New York State Constitutional provision that "(t)he legislature shall provide for the maintenance and support of the system of free common schools, wherein all the children of this State may be educated" (N.Y. Const., Art. XI, Sec. 1); the State compulsory attendance law applying to children between the ages of 7 and 16 (N.Y. Educ. Law, Sec. 3205); and the statutory right of a person between the ages of 5 and 21 to attend the public schools (N.Y. Educ. Law, Sec. 3202). Further, although the Supreme Court in San Antonio Independent School District vs. Rodriguez, 93 S. Ct. 1278, 1297 (1973) declared that education is not a "fundamental right" protected explicitly in the Constitution there are still substantial arguments based on the equal protection and due process clauses of both the federal and state constitutions, barring the exclusion of handicapped children, or categories of such children, from the public education system. See cases quoted in the text following.

[3] N.Y. Educ. Law, Sec. 4404(2) and (4); Matter of Reid.

[4] Fleischmann Report, vol. II, Chap. 9.

[5] Ibid., p. 9.1

[6] Ibid., p. 9.4

[7] Regents of the University of the State of New York, The Education of Children with Handicapping Conditions, SED (1973), p. 7

Endnotes

[8] Chapt. 241 of the Laws of 1974.

[9] Ibid., Sec. 7; N.Y. Educ. Law, Sec. 3602(10)(3).

[10] See Foreward endnote 2 for references to sources on the rights of handicapped children to education.

[11] Pennsylvania Association for Retarded Children (PARC) vs. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (1972).

[12] Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.C. D.C. 1972).

[13] LeBanks v. Spears, 60 F.R.D. 135 (E.D. La., 1973).

[14] Maryland Association for Retarded Children (MARC) vs. State of Maryland, Equity No. 100/182/77676 (Circuit Ct., Baltimore City, April 9, 1974).

[16] Center for Law and Education, Classification Materials, (Cambridge, Mass: Harvard University, 1973) includes and lists many such cases. For up-dated ongoing summaries of litigation involving the education of handicapped children see: Alan Abeson, A Continuing Summary of Pending and Completed Litigation Regarding the Education of Handicapped Children (Reston, Va: Council for Exceptional Children - State-Federal Clearinghouse) latest issue Nov. 1973; Newsline (South Bend, Indiana, National Center for Law and the Handicapped); and Paul Friedman, Mental Retardation and the Law (Washington, D.C., U.S. Dept. of Health, Education & Welfare, Office of Mental Retardation Coordination).

Endnotes

[17] Among the states which in the last few years have enacted legislation enforcing or significantly expanding the educational rights of handicapped children are Indiana, North Dakota, Massachusetts, Rhode Island, Tennesse and Wisconsin.

[18] A comprehensive revision of Article 89 was before the New York State Legislature in the Spring of 1974. That bill, which aimed at protecting and expanding the rights of handicapped children, was criticized by some advocacy organizations for the handicapped as not being well conceived and as possibly abrogating rights already in effect because of an overemphasis on mainstreaming, and died in Committee.

[19] Thus, The State Education Department in an official publication, The Training and Supervision of Teachers for Emotionally Disturbed Children, SED, (1964), issued as a handbook for the guidance of teachers for the emotionally handicapped at the time the education law was revised to require districts to provide education for such children, in an initial chapter distinguishes between "two different orders of phenomena," "socially maladjusted and emotionally disturbed" (emphasis in the original) but defines social maladjustment in terms of "causes" some of which clearly may relate to emotional disturbance, including: "(t)he child is transferring his aggressive feelings for the parents to the teachers; (t)he child has anxiety because he is uncertain of his mother's love, and the aggression is an expression of anger at being away from his mother," "(t)he capacity to absorb the sensory stimulation of the class is limited, and the child's aggression is a paniclike response." The inclination of professionals to assess middle-class children with adjustment problems in terms of the children's own emotional needs, but to assess poor children only in terms of the social impact of their behavior, is illustrated in a study by John Garfield, Steven Weiss, and Ethan Pollack described in the Journal of Counseling Psychology, Vol. 20, No. 2 which demonstrates the different reactions among 18 school counselors asked to evaluate a hypothetical case of a "defiant," "disruptive," "aggressive" 9 year old boy, also a "poor achiever" where half of the counselors were told he was from a poor family and half were told he was from a high income family. In the case of the upper-class child the counselors indicated desire to pursue the facts further before drawing conclusions and a desire to become involved with the case; in the instance of the poor child the counselors suggested such remedies as holding the boy back and were generally pessimistic, considering "dropping out" and delinquency inevitable. Endnote 58 at pg. 57 ahead discusses the distinction under federal guidelines between "severe emotional disturbance" and "social maladjustment."

SECTION II

BACKGROUND

ESTIMATE OF THE NUMBER OF EMOTIONALLY HANDICAPPED CHILDREN IN NEED OF SPECIAL EDUCATIONAL SERVICE IN NEW YORK CITY

At the outset it is necessary to make a working estimate of the number of emotionally handicapped children in need of appropriate special education programs in New York City. Such appropriate programs would include a continuum of services ranging from short-term supplemental programs to full-time special classes and schools.* As indicated below, there is probably a minimum of some 20,000-plus children in need of such special education programs** while only somewhat over 7,000 children are currently enrolled in special programs. Furthermore, there are only a minimal number of children who receive appropriate services in programs not labelled as "special education programs" (such as programs administered by individual schools or community school districts) or through the complement of supportive personnel assigned to serve the general school population (such as guidance, clinical, or attendance personnel).

NUMBER OF CHILDREN IN NEED OF SPECIAL SERVICE

The United States Office of Education uses 2% as the prevalence estimate of emotionally disturbed children in the school age population.1) Based on this estimate, there are some 22,000 emotionally handicapped children in the current New York City public school population of 1,105,575.2) This estimate of the emotionally handicapped school population is undoubtedly an under-approximation, since New York City with its high poverty population surely has a greater than normal incidence of emotionally disturbed.3)

Moreover, the pupil population referred to as the base population does not include children in non-public schools, or children not on any school register. Based on the 1970 census reports of 1,618,988 children between the ages of 5 and 17,4) the emotionally handicapped population would be over 32,000. Furthermore, under the New York Education Law, a school district may have an obligation to provide instruction to a handicapped child through the school year of that child's 21st birthday.5) Thus, an even greater number of children6) would be involved. +

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* Programs which involved residential placement are beyond the scope of this report.

** This chapter is restricted to estimating the quantity of service available and does not deal with the quality or appropriateness of the available program.

+ At the same time it should be kept in mind in qualifying this prevalence data that not all children with emotional problems have school related problems, or require special education (though they might need mental health services).

The 2% prevalence estimate is considered to be conservative by many authorities[7] and far higher estimates have been postulated for New York City. The Office of Children's Services of the New York City Department of Mental Health and Mental Retardation (DMH) has suggested that there are 100,000 to 300,000 children in New York City with mental health needs. DMH further estimates that "a considerable percentage of these children might profit from day-treatment programs" (defined as programs which provide special education within a therapeutic community).[8] At least one authority has suggested that based on his experience in New York City schools, some 6% of the school population may be in need of segregated programming because of emotional disturbance and behavior disorders.[9]

Accurate hard data is not available on the possible number of emotionally handicapped children in New York City, principally because the very paucity in number and sometimes in the quality or reputation of programs available is itself a barrier to identifying children. For example, children are not placed on waiting lists when there is no realistic hope of obtaining service.

The following data are suggestive of the extent of need of special services for the emotionally handicapped:

1) There have normally been between 1,400 and 1,700 children out of school on home instruction in New York City for reasons of emotional disturbance.[10]

2) In December of 1973, personnel involved in the Board of Education's programs for emotionally handicapped children said that 1,000 children had been certified as emotionally handicapped and in need of special services (the Board had planned to provide places for 909 children in classes for the emotionally handicapped in the spring of 1974);[11] in addition, another 5,000 children in this category had been identified by personnel in the school system, although not evaluated.

3) Last year one community school district (District 30, Queens) surveyed its schools to determine how many handicapped children were in need of special class placement. The schools reported 280 children awaiting screening for special classes or schools for the emotionally handicapped (this number constituted more than half of the total of 523 handicapped children which that school district found to be awaiting screening or placement).

PROGRAMS AVAILABLE

Although there are some 20,000 emotionally handicapped children (indicated above as a minimal estimate) in need of special education services in New York City, there are currently Special School non-residential programs available for only somewhat over 7,000 children. Of this number the public sector provides about 4,600 placements in its major programs (special classes and Special Day Schools).

Public Sector[12]

Special Classes - The public sector presently serves about 2,000 children (both boys and girls) in special classes and programs, most of which are located in regular public schools (some classes and programs are located in outside facilities, such as clinics and hospitals). About two-thirds of the children served in these classes are classified as moderately emotionally handicapped (of these, a small number of pupils, considered minimally disturbed, are served in part-day Resource Room programs). The overwhelming percent (at least 75%) of the children serviced in these special classes and programs are at the elementary level, with less than 100 high school age students in such programs. The Board of Education plans to expand these programs for an additional 4,000 children for the school year 1974/75 if funds are available.

Special Day Schools - Approximately 2,600 children are served in Special Day School Programs. The Special Day Schools serve only the fifth grade level and above (about 1,800 in the elementary and middle schools from fifth to eighth or ninth grade, and about 800 at the high school level). The schools are not co-educational; only two of the 18 schools serve girls.

District School Programs - In addition to the centrally administered programs, which are designated as special education programs, there are also a number of children participating in community school district or individual school programs, which although not necessarily labelled as such, are specialized programs, often similar in design to the classes run by the central board. No estimate is available from the Board of Education on the extent of such programming or the number of children served. The answers from the districts contacted by the authors varied, some reportedly providing no such programs (District 9, Bronx) to those providing placement for some 200 children (District 15, Brooklyn). Because of funding limitations and the fact that the districts are not considered to be responsible for programming for the handicapped, such special services as there are only exist at the demonstration or pilot level. Because of the wide variance of services among districts and the lack of any data from the Central Board as to these districts' programs, it was not possible to make an overall estimate of the number of children so served. As the Central Board has expanded the special classes for the emotionally handicapped it has, in some cases, taken over programs formerly run by the districts.

Private Sector

The non-public sector apparently provides placement for some 2,500 certified emotionally handicapped children. The majority of these placements, about 2,000, are in facilities known as 4407 schools (because they are supported in part by State tuition grants under Sec. 4407 of the N.Y. Educational

Law).* Another 400 to 450 children are in day-treatment centers, in which a voluntary agency (and in some cases a public medical facility) provides facilities and mental health and other supportive services and the Board of Education provides the teaching facility.12)

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*The 2,000 figure is the best approximation we were able to make based on the following information provided by the Board of Education, Division of Special Education, State Aid Unit. Some 4200 to 4500 New York City children receive 4407 grants (4300 is the figure normally used); the overwhelming number of such grants are for children attending day schools (rather than residential placements). The State Aid Unit estimated that one-third to one-half of the 4407 grants are for children who have been diagnosed as emotionally handicapped and that another third are for children diagnosed as neurologically-impaired (some of whom are also emotionally handicapped), the remainder of the grants are for children with various other handicapping conditions, such as severe retardation, severe cerebral palsey or combinations thereof. As is discussed in detail in the following chapter funding by tuition grants from the State under Education Law 4407 is being replaced by new systems of public support: under contract with the Board of Education (Education Law 4404 (2)(b)) the costs of which are largely reimbursed by the State.

Endnotes

[1] Estimated Number of Handicapped Children in the United States (1971-72) prepared by the Bureau of Education for the Handicapped, U.S. Office of Education, Department of Health, Education and Welfare, Nov. 1971.

[2] The overall public school population figure represents the estimated day-school register for 1973 as reported in Chancellor's Budget Estimate for 1974/75, Board of Education of the City School District of the City of New York, December 28, 1973, p. 118. Broken down by school levels: there are some 6,000 emotionally handicapped children at the high school level (out of a total high school population of 304,100); some 4,400 emotionally handicapped at the middle school level (out of a total middle school population of about 221,425); and about 11,000 emotionally handicapped at the kindergarten-elementary level (out of a total kindergarten-elementary population of about 548,100). General population estimates at the three levels are derived from Budget Estimate, p. 118. These figures do not include 31,950 children on home instruction, in special schools, or special classes. The "Plan in Response to Reid" (Board of Education of the City of New York, Office of Special Education and Pupil Personnel Services, January 31, 1974) refers to a need for services for 4466 emotionally handicapped students at the middle school level (299 severely disturbed and 4,167 moderately disturbed) and 6,569 at the high school level (2,729 severely disturbed, 3,840 moderately disturbed). How the distinction in severety of disturbance is made and the reason for the discrepancy between middle and high school is not known.

[3] This suggestion is made in the Fleischmann Report, vol II, p. 9.Bl.

[4] U.S. Census of Population: 1970, General Population Characteristics, Table 24.

[5] N.Y. Educ. Law, Sec. 4404 (4).

[6] As reported in the 1970 Census, Table 24, there were 1,989,374 children aged 5 to 21 in New York City and thus some 39,787 emotionally handicapped children. On the other hand, it should be noted that the city public school population has declined by between 1% to 2% yearly since 1971, and it is anticipated that this decline will continue over the next several years.

[7] Samuel Kirk, Educating Exceptional Children, (Boston: Houghton Mifflin Co., 1972), pp. 401-402, cites studies finding between 5.2% and 10.5% of pupils studied to have behavior disorders, and one estimate of 22% is cited. Kirk suggests that it is obvious that the prevalence figure depends on the definition and degree of behavior disorders the investigator establishes.

[8] This estimate is made in a Discretionary Budget request from DMH to the Bureau of the Budget, dated January 26, 1972.

[9] Hyman Eigerman, "If I Had My Way", Bulletin of the Council for Basic Education (December, 1973) p. 13. This article was quoted with approval by Albert Shanker, President of the United Federation of Teachers of the State of New York, in his weekly column in the New York Times, January 13, 1974, Sec. E, p. 9.

[10] Derived from "Statistics for Home Teaching by Handicapped [sic]," by Bureau of Education of Physically Handicapped, covering period June 30, 1971 - June 30, 1973 (copy reproduction). For instance: as of Jan. 1972, 1,439 emotionally handicapped were on home instruction; as of June 1972, 1,679; as of Jan. 1973, 1,427.

[11] "Plan in Response to Reid," Order #2.

[12] More detailed data and sources on the numbers of children served in both the public and private sector are set forth later in this report in chapters describing the respective programs.

THE FINANCIAL STRUCTURE OF SPECIAL EDUCATION FOR NEW YORK CITY[1]

STATE SUPPORT OF THE PUBLIC SECTOR

Under New York State Law and public policy as affirmed by the Reid Case, the Board of Education of the City of New York is required to provide suitable educational services for handicapped school age children residing within the city. That mandate is set forth in Article 89 of the New York Education Law,[2] and in Part 200 of the Regulations of the Commissioner of Education. The Commissioner's Regulations provide standards for the educational service, such as evaluation requirements, class-size limitations, and teacher qualifications.

Although the education of handicapped children (particularly emotionally handicapped children) is necessarily expensive on a per-pupil basis,[3] until the enactment of a legislative revision of the system of state apportionment (Chapter 241 of the Laws of 1974), New York State provided virtually no added financial support to comply with the state mandate. The city has received the same per pupil contribution for the expense of educating a handicapped child as for educating a child in a regular program. The lack of state aid for special education has been one of the causal factors of the inadequate city system for the education of the handicapped described within this report. Aside from the city's need for monies to finance the programs, the failure to have funds earmarked for handicapped children has meant that there has been no safeguard to protect the financing of special education from the pressures of competitive financing needs of other educational programs and other city services.

Chapter 241

In April of this year, the legislature enacted a major revision of New York State's aid to education formula in Chapter 241 of the Laws of 1974, which, among other changes, provides new state aid apportionments for special education.[4] New York State operating aid to school districts to support public education is apportioned by a complex formula (elements include pupil population, per-pupil property valuation, and attendance).* For operating aid purposes, Chapter 241 provides for the double weighting[5] of "pupils with handicapping conditions" attending district operated special education programs (this category includes the emotionally disturbed).** There is disagreement over how much aid the city will receive in that category for 1974/75. The city estimates approximately $9.4 million[6] based on 16,665 pupils.[7] The state estimates that the amount will be higher. The long-range effectiveness of the formula is dependent on whether the relation of the basic operating aid formula to actual education costs is realistic and equitable.

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*The Governor's Task Force estimated that for 1974/75, per-pupil operating aid will be: Brooklyn, $653; Bronx, $810; Manhattan, $428; Queens, $420; Staten Island, $421. Operating aid is computed on a borough basis for New York City. (Figures supplied to the authors by the Public Education Association, New York City.)

**Other definitions included pupils with handicapping conditions as: trainable mentally retarded; educable mentally retarded; visually impaired, hearing impaired, physically handicapped, or severely speech impaired.

For large city school districts, Chapter 241 also provides a second type of aid for special education: special services aid for "severely handicapped pupils"[8] (including severely emotionally disturbed pupils*) in the amount of approximately $2,080 per pupil for New York City for 1974/75. Operating aid is not allocated for those children counted for special services aid. Special services aid may be apportioned for children who attend district administered special schools or who attend **private** special schools contracted for by the district. There is also disagreement as to how much aid the city will get for severely handicapped children. The city representatives estimate approximately $10.7 million[9] based on 5,510 pupils[10]. (The estimate does not include children in private special schools, since no arrangements have been made yet for contracting.)

Under Chapter 241, aid is also available for "pupils with special needs" (defined in terms of severe retardation in reading and mathematics) who may be weighted at 125% for operating aid purposes. That apportionment replaces State Urban Education Aid[11] which had been provided on a categorical basis for programs for economically disadvantaged, reading retarded pupils. The Board of Education projects it will receive $64.8 million in such aid (Urban Aid would have provided $37 million). Of this amount, $1.6 million will be available for pupils participating in special education programs. For the year 1974/75 Special Education would have received approximately $924,000 in Urban Aid Funds.[12]

Aid apportioned on these special bases must be used for specific programs for such children. The school receiving special aid pursuant to these provisions must comply with regulations issued by the Commissioner of Education and must present an acceptable plan to the Commissioner describing the use and expected impact of the apportionment.[13]

Chapter 241 retained the system of apportioning state education monies based on attendance rather than enrollment. That system discriminates against districts with a high poverty population and correspondingly high truancy rates. Furthermore, as is discussed in Section III, Chapters 2 and 3 of this report, truancy is frequently symptomatic of emotional handicaps or other handicapping conditions. We suggest that both the city school district and the state have an obligation to provide an education to such children, and where needed, a special education program. Truancy may require a greater rather than a lesser educational expenditure, thus it is totally improper to deprive the localities of the benefit of aid because of absences.**

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*Other pupils included are: trainable mentally retarded, severely crippled and health impaired, severely hearing impaired, multiple handicapped. These terms, as well as the terms applying to "pupils with handicapping conditions" are to be defined by the Commissioner of Education with the approval of the Directors of the Budget.

**On September 24, 1974 New York City, together with Buffalo and Rochester, brought suit challenging the constitutionality of the state aid formula which compensates districts having low property tax wealth, but fails to take into account intensive needs and expenses of urban areas. The suit included challenges to the distribution of funds on the basis of attendance rather than enrollment, the insufficient aid for handicapped and disadvantaged children, and the failure to provide aid for non-English speaking pupils (N.Y. Times 9/24/74, p. 1, col. 2).

CURRENT BUDGET FOR SPECIAL EDUCATION IN NEW YORK CITY

In the current year (1974-75) considerable new monies are available for special education. However, the principal input of new funds has been an added allocation of approximately 20 million dollars from newly enacted federal aid to education provisions14). As of June 1974, despite the expansion mandate of the Reid Order, the City in its budget had allocated only a small increase for special education from a $113 million budget of 1973-74 to a $138 million budget for 1974-75 (exclusive of federal aid). That increase barely reflected the Board of Education's conservative estimation of $21.7 million in added state allocation specifically for handicapped children resulting from the new state aid formula (with an estimated $13.8 million in other state aid for education attributable to such children).15) However, in September of 1974 another $30 million was added to the special education budget ($20 million from the new federal money, $6.2 million Social Security funds for the handicapped and $3.8 million surplus funds from the 1973-74 budget).16)

The delayed infusion of these funds, however, meant that programs could not be planned to open with the school term in September 1974.17) It has also meant that programming is being implemented with little opportunity for community, or consumer or citizen participation in the planning process.

Furthermore, although the City has recognized the need for expansion of special education programs to serve new children, there is no concomitant recognition of the need for quality programming. In fact, the City has required the Board of Education to raise class size to state minimum levels.18) As will be described later in this report, most programs for the emotionally handicapped are already inadequately serviced.19)

All city and state monies for special education are allocated to the central Board of Education (not to the community school district) which, through the Division of Special Education and Pupil Personnel Services, administers special education for the city public school system.

THE FINANCING OF PRIVATE-SECTOR PROGRAMS; CURRENT METHODS20)

Tuition Grants

Although heretofore New York State has not provided New York City with assistance for public special education programs, the state, in common with many other states, has provided tuition grants to educate handicapped children in privately administered special education programs. There are two types of grants which have been available, both of which may be used on behalf of emotionally handicapped children: 1) 4407 grants,21) which are administrative grants under Section 4407 of the Education Law authorized by the State Education Department to approved schools for a maximum of $2,500 yearly per child,* the costs of which are paid by the state; and 2) 232 Orders, which are Family

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*This was raised from $2,000 by an Act of the 1974 Legislature.

Court orders for payment by the city under Section 232 of the Family Court Act[22] for the costs of tuition (or maintenance or transportation).* There is no yearly maximum on such payments. Normally under a separate statutory section,[23] the costs of the Order are reimbursed by 50% by the state. The 232 Orders are ordinarily used to supplement 4407 grants.

Each of these systems issues tuition grants on behalf of the individual child and is theoretically based on the unavailability of an appropriate public program. However, because of the special education vacuum in the city public system, 4407, and to a lesser extent 232, have become systematized into an extensive program of publicly financed privately run programs.

There are approximately 50 proprietary and non-profit schools located in New York City which are approved by the state as 4407 schools. There have been about 4,300 New York City children receiving 4407 grants[24] at a cost to the state of about $8.6 million per year.[25] Approximately two-thirds of these children are classified as emotionally handicapped, brain-injured, or a combination of these conditions,[26] reflecting the fact that the lack of programs for the emotionally handicapped has been the greatest gap in the public system, and that until the past few years there was virtually no public program for neurologically impaired children. Because the 4407 grant does not cover the full cost of tuition and it is usually necessary for the parent to pay another $1,500 to $2,000, as well as other barriers described elsewhere in this report,[27] the 4407 schools have largely been unavailable to poor and minority group children.

The 232 Orders are a method of covering the full cost of attending a special private school, and the use of these Orders has been increasing for New York City. In the year 1970/71, only 21 petitions were filed and 11 were granted.[28] In the year 1972/73, however, 656 petitions were filed and 411 granted.[29] However, getting a 232 Order had been an onerous procedure requiring an attorney and a court appearance, and thus had not been available on a large scale for children from families without any resources or from disorganized families. During the school year 1973/74 the 232 process was simplified to eliminate the need for a hearing in most cases, increasing the possibility of poor families obtaining orders.[30]

Contracting with Private Facilities

In addition to the tuition grant, there are two other systems of privately run but publicly financed education programs for handicapped children.

The Day Treatment Model.[31] With this system, the New York City Board of Education provides the instructional faculty, assigning teaching positions and educational materials, but an outside agency (normally a voluntary agency) provides the physical facility as well as clinical and other services (the agency may depend on other public funding sources). There are about 400 children currently served in such centers.[32]

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* The costs of such orders to the city are charged to the capital budget, and not to the budget of the Board of Education.

Section 4404 Contracting. Under Section 4404(2)(b) of the Education Law school districts are authorized and empowered to contract with private special education schools for the education of handicapped children. Except for the Day Treatment model, this alternative had not been used in New York City. However, the Board of Education and the state are now in the process of converting the 4407 system into a system of contracting out under 4404(2)(b).

In the Reid case, the Commissioner affirmed the availability of the contracting alternative as a method for the Board of Education to meet its obligation to handicapped children.33) Chapter 241 provides that special services aid may be apportioned on the basis of children attending such schools.* The State Education Department has indicated that it expects the school districts to take over the funding of 4407 schools through this method, with 4407 to be used only for contracting out of the state, or for unusually handicapped children.34) As an interim measure the State Education Department has agreed to approve 4407 grants for 1974-75 for those children who were recipients of such grants in 1973-74. 232 Orders to supplement these grants to meet full tuition costs will not be contested by either the city or state.

The New York City Board of Education is now in the process of negotiating such a contract for new children with schools previously approved by the state as 4407 facilities. The City Board proposes reimbursing the schools in the amount of $3,000 per child yearly. The city, in turn, will be reimbursed by the state in the amount of $2,080 per child under Chapter 241 special aid for severely handicapped children. The question of whether 232 Orders will be available to parents on a consent basis for the supplemental tuition costs has not yet been settled. The State Education Department has indicated that it will fight reimbursing the city any further in this manner.

TRANSPORTATION AID

Under New York Statutory Law, the New York City School District is required to provide transportation to and from school for handicapped children (including the emotionally handicapped) who attend either public or private special education schools within a distance of 20 miles from their homes.35) Such transportation expenses are 90% reimbursed by the state, as are most school transportation expenses involving children attending either regular public or private programs.36) The Board of Education reports that 10,324 public school handicapped children and 7,252 private school handicapped children are transported door to door annually, with another 2,702 handicapped public school children traveling free by public transportation.35a)

Because handicapped children frequently travel to non-neighborhood schools (particularly those attending private schools), and because handicapped children are often provided with door-to-door transportation rather than public transportation, the per child cost of transportation is not insignificant. For instance, transportation costs to one private school, where the yearly per pupil cost of the program was $4,200, was about an additional $2,000 per pupil.37)

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*Such aid is only available to the large cities (including New York City).

The practice in New York City is to provide handicapped children attending private schools with door-to-door transportation or free public transportation as requested by the private school (usually high school age emotionally handicapped pupils use public transportation).38) Door-to-door transportation for private schools is in mini-buses. The Bureau of Pupil Transportation was unable to provide an average per pupil cost of such transportation, but estimated that in 1972/73, a mini-bus in Queens, which transported at most 10 children, cost between $64 and $103 a day.39) Public school handicapped children are provided with transportation in larger buses which are somewhat less expensive (there was no estimate available). Children attending Special Day Schools (who may be as young as 10 years old) are provided free public transportation, not with door-to-door transportation.

FEDERAL CATEGORICAL AID PROGRAMS

Until this coming school year (1974/75) added state assistance has not been available for financing programs for handicapped children as such. However, federal and state categorical aid programs have presented an avenue for financing programs for emotionally and similarly handicapped children. Principally Title I monies for educating children from low-income families has provided financing for programs supplemental to the local school system, as has, to a lesser degree, State Urban Aid. To some degree the availability of such monies and the necessity to design programs to qualify for the funds has been a catalytic agent in developing new and experimental programs. Title I filled a need in the area of education of the handicapped where there has been a serious gap in service and there is a need for innovative programming. Federal aid programs specifically providing aid for the handicapped are also available, but the monies available until this year (1974-75) from these programs has been limited. This fall, however, amendments to the Elementary and Secondary Education Act have resulted in the added allocation of $20 million to the special education budget.

Title I40)

Title I of the landmark Federal Elementary and Secondary Education Act of 1965 was designed to provide financial assistance to localities serving high concentrations of children from low-income families in their school systems. Because of the large numbers of poor families living in New York City and the high per capita cost of public education in the city, New York City has annually received about 10% of all Title I monies. In 1973/74, Title I aid amounted to about $163 million.41) For programs run during the school year (September through June), the community school districts (elementary and middle schools) received about $115 million; the high schools about $22.7 million; and nearly $5.5 million for special education including institutionalized pupils.42) The Mayor in his budget message had projected that new amendments then under consideration to the Title I provisions would result in a $23 million cut in the city's share of such funds which New York City would receive.43) However, the amendments of ESEA have resulted in an increase of federal support for special education.44)

New York State, through Urban Education Aid, has provided similar categorical assistance for disadvantaged children. That program is now replaced by the 125% weighting of children with special needs. In 1973/74 the city received about $38.9 million in such funds, of which $28.9 million went to the community school districts, about $9 million to the high schools, and nearly $1 million for special education.45)

The categorical assistance funds (particularly Title I) have been of particular importance to the community school districts because most of the districts' alloted tax levy monies are taken up with pre-determined personnel costs (negotiated for on a city-wide basis) and other mandated commitments. These funds have been the principal discretional monies available to the districts. Because there has been a continuing gap in service and teaching for emotionally handicapped and disabled children, many of the districts have used some of these funds to provide programs to serve such children, although they are not always called special education as such. The dual impetus for providing such programs has been that the deviant behavior of many of these children presents severe problems in administering the district schools.46)

At the central level, Title I and Urban Aid funds have been used to initiate programs which are designed to be forerunners for expanded services. Special education programs have been created which may not have otherwise come into being. Services initially funded by such monies include programs serving the emotionally handicapped, such as the Transitional Class Program47) and the Evaluation and Placement Unit,48) as well as other significant related programs, i.e., The Readiness Program for Pre-School Children with Learning Disabilities (a program which works in conjunction with hospitals, clinics, and agencies in disadvantaged areas), Operation Step-Up (a program to improve the reading and math achievement of children who are functioning retarded but who have greater potential), and Classes for the Doubly Handicapped (a program for children who are both retarded and seriously physically handicapped).

On the other hand, the principal Title I program for the Special Day Schools for Socially Maladjusted and Emotionally Handicapped is an umbrella program which provides services that are integral components of the schools' basic program (i.e., reading specialists, assistant principals). In this case Title I money has been used to supplant rather than supplement services.49)

At the high school level, categorical aid funds have been used to finance some of the costs of the remedial component of alternative school programs which frequently have served as placements for emotionally handicapped children.50)

Aid for the Handicapped

There previously has been only a limited amount of federal funding specifically available for the education of handicapped school-age children.

Title VI (Education of the Handicapped Act).51)

Under Title VI, funding is available, in a program of formula grants based on the number of children in the state, to assist state education departments in the initiation, improvement, and expansion of educational and related services for pre-school and school-age children. In 1973/74 the New York City public school system received an estimated $732,672 in such funds.52) Since the Central School Board is considered to be responsible for all programming for the handicapped in New York City, these funds are only available to the Division of Special Education and not to the community school districts nor the high school division. Title VI monies have been used to fund such programs as the Comprehensive Program for Autistic Children,53) The Pilot Outreach Program for Mentally Retarded Children (providing field workers to work with the child's community and home), and a psychiatric hospital-based remedial program for out-patients of school age.54) As stated above, there has been an increase this year in federal aid for the handicapped and there are considerable pressures to expend such aid to take over the substantial added costs of special education programs.

Earmarked Funds

In addition to Title VI, aid has been available for the handicapped in the form of earmarked funds guaranteed as a condition of various federal granting programs; i.e., Title III55) (grants on a competitive basis for innovative and exemplary educational programs wherein 15% of a state's grant must be allocated to programs for the handicapped). (New York City has not been successful in funding any programs for emotionally handicapped children under Title III.) Under the Vocational Education Act (VEA)56) 10% of the monies must be earmarked for the handicapped. VEA funds have been used to finance programs in Special Day Schools and institutional schools.

Aid to the Disadvantaged in State Supported Schools

Under an amendment to Title I (P.L. 89-313), federal aid is available to such state agencies as are directly responsible for providing free public education for handicapped children and to schools providing special education under contract with the state. That aid is available to private schools which are funded through 4407 grants, for supplemental programs for non-tuition paying students. In the fiscal year 1974, the estimated New York State allotment was $7,253,392.57) We were unable to determine how much of that funding went to New York City 4407 schools.

In some important instances, categorical funding has successfully funded pilot programs which were later taken over and expanded using local monies. However, most of the programs are expensive on a per capita basis and realistically it is unlikely that they will be funded on a local basis for programs serving a meaningful number of children. Furthermore, the availability of these funds varies yearly. Funding criteria and priorities are also changeable, and programs may be distorted to reflect these changes.

CONCLUSIONS AND RECOMMENDATIONS

1) Clearly the underlying financing need, which any advocate for the handicapped must assert, is for federal and state financing to pay a large portion of the costs of these expensive programs. In New York City, realistic programs are necessarily expensive. It is meaningless and destructive to diagnose a child, then label and stigmatize him as handicapped, and not provide him with a program sufficiently adequate to be appropriate to his needs. In New York City, too often the children involved are multiply handicapped by the effects of poverty, discrimination, and deprivation, requiring outreach efforts which are even more costly.

2) To protect the interests of the handicapped children, such funds must be restricted for the use of the children involved and be additional to local input. Otherwise, competitive pressures will divert funding to other programs. Such is particulary the case in regard to the disadvantaged emotionally handicapped children whose parents are typically not in the position or sufficiently organized to protect their children's interests. Where funds are available for the handicapped, disadvantaged children with underlying handicapping conditions should not be disqualified as beneficiaries on the grounds that they are "socially maladjusted" rather than disturbed. This issue will become of greater importance if and when federal monies for the education of the handicapped are substantially increased.58)

3) Beyond the obvious need for adequate financing, there is a need for rational planning by the Board of Education.

a) The Board of Education of the City of New York should provide a long-range flexible plan for educational services for the handicapped. That plan should take into account the number of children who need to be served and encompass the resources of the private sector, the community school districts, and the various alternative programs currently servicing handicapped children, in addition to attempting alternative methods of providing special services within the school itself. Presumably both the Riley Reid Order and Chapter 241 require that such a plan be prepared.

b) A cost analysis should be undertaken by the Board of Education in reference to the various special education programs. Special education programs, particularly those for emotionally handicapped children, are expensive. Accordingly, it is particularly necessary to be aware of the per capita costs of the various services. Elsewhere in this report the authors have recommended that an analysis be made of the long-term effectiveness of the various programs.

c) The Board of Education and the Division of Special Education should be allocated funding within a time table which permits adequate planning. Presently the Division does not know until June what funding will actually be available for the following school year. Typically, the Division has requested an unrealistic amount of money, has planned programs based on such funds and has galvanized parent support at the various budget hearing levels, but then has received only a small percent of the request. Programs are finally set up on a crash basis with no opportunity for parent or public input. Although similar financing uncertainties affect the entire public education system, because the Division of Special Education is in the process of establishing a virtually new system of service, (rather than augmenting or continuing programs) the need for careful responsible planning is crucial.

Endnotes

[1] This section is intended to give a picture of the financing system as a causal factor in shaping the special education system in New York City. It is not intended as a fiscal analysis of costs or methods of financing.

[2] N.Y. Educ. Law, Sec. 4401 et seq. For instance, state regulations limit class size for emotionally handicapped children to a maximum of ten. [Regulations of the Commissioner of Education, Sec. 200.3 (b)]. In addition to smaller classes, the high cost of special education is attributable to such factors as the need for supportive services from physicians, clinicians, and other appropriate specialists, and special teaching materials. For estimations as to the comparative costs of special education, see R. A. Rossmiller, J. A. Hale, and L. E. Froehrich, *Educational Programs for Exceptional Children, Resource Configurations and Costs*, National Education Finance Project, Special Study No. 2 (Madison, Wis., Dept. of Educational Administration, University of Wisconsin, 1970) p. 55; and *Fleischmann Report*, vol. II, p. 9.68. *The Rossmiller Study* derived a cost index for various types of special education programs by comparing, for a series of school districts, the median program costs of special education programs (considered to be quality programs) with the median program costs of regular school programs in the respective district. Indexes ranged from 1.18 (speech handicapped) to 2.99 (auditorily handicapped) with a cost index of 2.83 (emotionally handicapped). The cost index includes transportation costs (which arefinanced on a separate basis in New York State). The authors made repeated inquiries to representatives of the Board of Education for per capita cost estimates of the costs of the various special education programs administered by the Board. We were informed that no such estimates were available or had been made. Informal estimates suggested that costs run as high as $8,000 per child (Board of Education of the City of New York, "Learning in New York," March 1974, p. 2).

[3] Prior to 1962, New York State provided categorical aid to support education programs for the handicapped. In 1962, the "Diefendorf Formula" of general state aid replaced all forms of special aid. In April 1974, new forms of special aid were enacted including those discussed in the text.

[4] Chapter 241 was enacted as a consequence of a major effort to achieve more equitable financing of and expenditures for public education in New York State where poor districts are severely disadvantaged compared to wealthy districts. The Fleischmann Commission had recommended full state funding for public education (*Fleischmann Report*, vol. I, Chap. 2). The Task Force on State Aid for Elementary and Secondary Schools appointed by the Governor,

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rejected full state funding but recommended measures which would lead to equalization of financing resources as well as providing special aid for the handicapped and children with special needs. The legislation enacted some of these recommendations, but adopted other special provisions which reduced the equalization effect. As a result of Chapter 241, in 1974/75, New York City, according to the Mayor's Budget Message, will receive a $105.8 million increase in state aid for 1973/74, State Aid will provide 29.3% of the total education budget of $2,684,000,000 (Executive Budget 1974/75, Message of the Mayor, May 15, 1974, pp. 46, 47). The education budget was revised in minor respects after this message.

[5] Double weighting is derived from recommendations made in the Fleischmann Report (which recommended weighting of 2.05), The Report of the Regents of the State of New York, The Education of Children with Handicapping Conditions (Albany, SED, 1973) p. 15, and the Report of the Task Force on State Aid for Elementary and Secondary Schools, April 1974, p. 26. The Fleischmann recommendation is based on the cost indexes of special education programs and the prevalence rates of handicapping conditions [see Fleischmann Report, vol. II, Table 9.16 (p. 9.80) and accompanying text].

[6] Board of Education of the City of New York, Bureau of School Financial Data, "Distribution of 1974/75 Estimated State Aid by B/E Program and Type of Aid," May 24, 1974.

[7] Data on the number of children provided by Stanley Berger, Division of Special Education.

[8] Special Services aid was enacted to compensate for the fact that New York City and the other big cities have been statutorily barred from running programs as BOCES (Board of Cooperative Educational Services, provided for under N.Y. Education Law, Sec. 1958). BOCES has profited from a more favorable funding formula than the general state aid formula. For instance, according to an estimate given to the authors by the State Education Dept. Division of Educational Finance, State Aided Programs Unit, in 1972/73 the average state contribution for a child enrolled in a BOCES program serving handicapped pupils was $1,455. In a recent evaluation of the BOCES programs the New York State Office of Education Performance Review suggested that a school district is reimbursed by the State for 70% to 80% of the costs of

sending students to BOCES programs for the education of the handicapped (State of New York, Office of Education Performance Review, "Board of Cooperative Educational Services," 1973, p. 13). For a critical analysis of BOCES, see that Study, (pages 53-63 pertain to special education) and also see Fleischmann Report, vol. III, p. 11.35 et seq. BOCES also administers vocational programs. Chapter 241 also provides some special services aid to big cities for vocational programs. Total special services aid does not come near offsetting the BOCES advantage, one critique of the current limitation on the cities suggests that under BOCES, New York City would get $104.6 million aid, whereas it will receive $18.0 million Special Services, "Summary and Critique of State Aid Proposals for Elementary and Secondary Education in New York State 1974 Legislative Session," p. 13, supplied to the authors by Democratic State Legislators.

[9] Source: Bureau of School Financial Data, see Endnote 6.

[10] Source: see Endnote 7.

[11] Programs previously funded under Urban Aid are discussed below in the text of this Chapter.

[12] Endnote 6 above.

[13] That plan must be presented in September 1974, and renewed tri-yearly.

[14] Under PL 93-380 (HR69), Elementary & Secondary Education Amendments, enacted 8/21/74.

[15] Source: Bureau of School Financial Data, see Endnote 6.

[16] This budget increase of approximately $45 million should be measured against the Board's original request for $91 million to implement the Reid order.

[17] According to Dr. Helen Feulner, the Executive Director of the Board of Education's Division of Special Education, the Board does not expect to place all handicapped children now on waiting lists until January 1975. (Statements by Dr. Feulner to Chancellor's Committee on Special Education, September 19, 1974.)

Endnotes

[18] Mayor's Budget Message, p. 46 (See Endnote 4 above); Dr. Feulner has reported that class sizes have been increased (Statements to Chancellor's Committee, Sept. 19, 1974).

[19] Sec. IV

[20] The operation of private sector special education programs is discussed later in this report, (Sec. V).

[21] N.Y. Educ. Law, Sec. 4407; for a discussion of 4407 schools see Sec. 5.

[22] N.Y. Family Court Act, Sec. 232. For a detailed discussion of the 232 process, see Sec. V.

[23] N.Y. Educ. Law, Sec. 4403.

[24] Source: Arnold Goldstein, Chief of State Aided Programs Unit, Division of Special Education, Board of Education. Goldstein estimated that there are between 4,200 and 4,500 New York City children approved to receive 4407 grants (the overwhelming number to attend Day Programs located in New York City); 4,300 is the number usually quoted and will be used in this report.

[25] The total state appropriation for 1973/74 for 4407 grants was $15,925,462. The requested appropriation for 1974/75 is $16,300,000, "State Education Department Summary of 1974/75 Budget Requests, Major Recommendations of the Regents for Legislative Action, 1974" (SED, Albany, 1973). There will be an added appropriation of $4.1 million to accommodate the increase of the grant's maximum from $2,000 to $2,500 per pupil.

Endnotes

[26] Source: Arnold Goldstein; see Endnote 24 above.

[27] Sec. V.

[28] "17th Annual Report of the Judicial Conference of the State of New York," 1972, p. 379.

[29] "19th Annual Report of the Judicial Conference of the State of New York." 1974, p. 359. The gap between petitions filed and petitions granted reflects principally pending petitions rather than dismissals or withdrawals.

[30] Informal estimates from the Legal Aid Society indicated that that agency alone filed 1,000 of the 232 petitions during 1973/74.

[31] For a discussion of the operation of Day-Treatment Schools see Sec. V.

[32] As of February 28, 1974, there were 435 children enrolled in such programs. Admission-Discharge Chart, Office of Special Schools, Board of Education.

[33] Matter of Riley Reid, p. 5, reaffirmed and amplified in a subsequent statement issued by State Commissioner Ewald Nyquist in News Release of March 15, 1974.

[34] Memoranda to all City, Village and District Superintendents, from William Bitner, Associate Commissioner for Instructional Service, April 29, 1974; May 16, 1974.

Endnotes

[35] N.Y. Educ. Law, Sec. 4404 (2)(a) and N.Y. Educ. Law, Sec. 2554 (18), mandate that the Board of Education provide transportation for school age handicapped children. Decisions by the Commissioner of Education limit that mandate to distances of 20 miles or less from the child's home [Matter of Perkins, 2 Educ. Dept. Rep. 77 (1963); Matter of Cohen, 9 Educ. Dept. Rep. (1969)]. In some cases 232 Orders have been used to pay the daily transportation expenses at private schools at a distance of over 20 miles (Peter Kupersmith, Queens Legal Services attorney reported to the authors that he had been successful in obtaining such orders, Matter of Anita H-3549-73 (Fam. Ct., Queens, Dec. 1973) (unreported case) and also for transportation for children under the age of 5 [Matter of Dixon, N.Y.L.J., October 9, 1973 (Fam. Ct. Kings)].

[35a] Board of Education of the City of New York, Facts and Figures 1973/74.

[36] N.Y. Educ. Law, Sec. 3602 (7).

[37] Information provided by the principal of the Martin de Porres School for Exceptional Children, that school is an ASFEC affiliate.

[38] As reported by Dr. John Neery of the Bureau of Pupil Transportation, Board of Education of the City of New York.

[39] Figures supplied by Dr. John Neery.

[40] Title I, Elementary and Secondary Education Act of 1965 (ESEA).

[41] Source: Board of Education of the City School Districts of the City of New York, Chancellor's Budget Estimate, 1974/75, December 28, 1973, vol. I, pp. XIII - XIV.

[42] Sources: Ibid., p. XIV; Board of Education, "Notice of Special Meeting, Wed., Aug. 22, 1973, Proposed Central Programs -- ESEA, Title I; and State Urban Education Funds, 1973-74, Aug. 14, 1973." As of August, 1974 it was projected that for the school year 1974-75 the community school districts would receive about $90.3 million, the high schools about $29.6 million, and there would be approximately $7.5 million for special education, including for institutionalized children (Board of Education "Proposed Initial Distribution of ESEA Title I 1974-75 'Planning Monies'" (August 14, 1974). This projection, however, was prior to the final enactment of new ESEA amendments.

[43] Mayor's Budget Message, p. 46

Endnotes

[44] P. 22 above.

[45] Source: Endnote 41.

[46] See Sec. IV, Chap. 4 for a description of such programs. Some similar programs have also been funded under the Federal Emergency School Aid Act, Title VII (Pub. L. 92 - 318) (designed to eliminate and overcome the educational disadvantage of minority group isolation; these are competitive non-formula grants).

[47] Described in Sec. IV, Chap 1.

[48] Described in Sec. III, Chap. 2.

[49] Described in Sec. IV, Chap. 2.

[50] Sec. IV, Chap. 5.

[51] Title VI-B, Education of the Handicapped Act (Pub. L. 91-230)

[52] Chancellor's Budget Estimate, p. XIII.

[53] See Sec. IV, Chap. 1.

[54] See Sec. IV, Chap. 1.

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[55] ESEA, Title III, (Pub. L. 89-10).

[56] Vocational Education Act of 1963, as amended.

[57] Source: New York State Education Department, "Description of Proposed Activities for Handicapped Children, for fiscal 1974," Jan. 9, 1973.

[58] Federal Guidelines implementing the Education of the Handicapped Act (45 CFR 121.2) in defining "seriously emotionally disturbed" for the purposes of the Title VI, provides that the term "seriously emotionally disturbed children" does not include children who are socially maladjusted but not emotionally disturbed. However, in setting forth the characteristics which may be used to determine which children are seriously emotionally disturbed, the guidelines give the following criteria, which would apply to most children attending New York City Special Schools for the Socially Maladjusted (1) an inability to learn which cannot be explained by intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers or teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) general pervasive mood of unhappiness or depression; (5) a tendency to develop physical symptoms, pains, or fears associated with personal or school problems.

SECTION III

SYSTEM OF IDENTIFICATION AND SUPPORTIVE SERVICES

THE CHILDREN

Adrienne

Adrienne is a 13 year old Black girl with serious physical and emotional problems. Until last September, she lived with her mother, Madeline Smith, and an older brother in a public housing project in Brooklyn. Adrienne is an epileptic who has periodic seizures. Her family has multiple problems. Her father died five years ago and the family is supported by social security. Last year her brother was arrested on drug-related charges. As a result, the family was threatened with eviction from the project.

Adrienne failed to adjust to school from the time of her enrollment in first grade. Her school records reflect a history of incidents involving uncontrollable behavior and occasional incoherent outbursts. As early as the second grade, she was referred to the Bureau of Child Guidance by her teacher, but there is no indication in her records that she was ever evaluated by BCG. Despite her difficult behavior and her recognized health problem, Adrienne was never placed in a special class or given any other special assistance. In fourth grade her disruptive behavior resulted in Adrienne being suspended for five days; at the same time, because of poor reading ability, she was left back a year.

In sixth grade, along with the rest of her class, Adrienne was transferred to an intermediate school. There, after several months, she was placed on a truncated schedule (half-day) because of her disruptive behavior. That schedule excluded her from both the language arts and mathematics classes (she naturally received failing grades in both of these courses because she was prohibited from attending).

While she was on this truncated suspense, the intermediate school referred Adrienne to the Board of Education's Evaluation and Placement Unit for possible placement in a class for brain-injured children. However, E&P informed the school that neurological and psychological reports were necessary prior to their beginning the evaluation process. Adrienne's mother took her to a hospital clinic for evaluation, but had to wait for several months to have the basic medical and psychological evaluation done, because she herself was overwhelmed with problems and missed two appointments. When she was informed that she would have to wait another two months for an appointment for a neurological examination, Mrs. Smith, in desperation moved her family to Florida to live with her sister. There Adrienne's problems were being evaluated by school personnel with a view toward placing her in a special class.

Angel

Angel is a twelve year old Hispanic boy who lives in an apartment in Queens with his mother, who is an invalid, and his grandmother, who speaks no English. The family is supported by welfare.

Angel is now in the sixth grade. He has a history of absenteeism since kindergarten. His mother is seriously depressed and dependent on

Angel, and thus she encourages him to stay home from school. During some school years he has been absent over 60% of the time.

In fourth grade, a teacher who was disturbed about his truancy and academic non-achievement, referred Angel to BCG. (Neither the mother or grandmother would come to school.) He was evaluated by a psychologist who found that he had above-average potential and recommended a special class placement for him. Nothing ever came of that referral and Angel continued as a truant.

Sporadically, an attendance teacher has gone to his home to try to persuade Angel's family to make him come to school, but his mother has been totally uncooperative. The Bureau of Attendance does not have the staff available to devote the kind of time and effort which is required to deal with this serious problem, although eventually the Bureau may have to initiate a court action against the child or family because of truancy.

ORGANIZATIONAL FRAMEWORK OF THE NEW YORK CITY EDUCATIONAL PROGRAMS FOR EMOTIONALLY HANDICAPPED CHILDREN

DECENTRALIZATION

Under New York City's partially decentralized school system,1) the community school districts have the primary responsibility for all pre-school, elementary, and middle school programs for "normal" children.2) High school programs for "normal" children are the responsibility of the Central Division of High Schools.3) The New York City Board of Education, through the centralized Division for Special Education and Pupil Personnel Services, has the responsibility for all programs for "handicapped" children, regardless of age.4) This category includes the "emotionally handicapped" child.

This division draws an artificial line between "normal" and "handicapped" when, in reality, no such clearcut differentiation can be made, particularly when emotional illness is involved. It is especially difficult and arbitrary to make such distinctions about moderately handicapped children. Under the New York Education Law the definition of "handicapped child" is limited to those children who are "not benefiting or cannot be expected to benefit from regular classroom instruction, but who can benefit from special services and programs."5) Yet, even within this context, "handicap" cannot be considered an absolute condition. Children may be unable to benefit in some "regular" classes but might function well in a different but "regular" school situation; children may be handicapped in some learning areas but not in others; children may have problems at some stage of development yet might be able to function in a "regular" class with some program modifications.

These children who, with special help, could function within the educational mainstream, are left largely unserviced in the centralized-decentralized division of responsibility. The decentralized schools and districts assume that the handicapped child is the responsibility of the central Board of Education. Thus, impetus is reduced for the districts to seek solutions for the child within the regular school setting. Furthermore, the districts feel that they have neither the personnel nor funding to provide the extra services which such children require.

It is also undoubtedly true that many community boards have acted irresponsibly and insensitively towards the needs of handicapped children. Under competitive community pressure for programs, after decentralization, most districts disbanded their special classes for emotionally handicapped children (Junior Guidance classes). Some districts eliminated guidance and attendance personnel without providing alternative resources for children who need the support of such services. However, no real attempt has been made by the Central Board to require that the community boards meet the needs of handicapped children or to educate the communities to accept the responsibility they have to these children, who, in reality, are part of the community.

The decentralized system presents specific barriers to the Division of Special Education for expeditiously setting up programs. The community districts control the school facilities and, even where space is available, may be reluctant to have certain children or programs in their schools. Additionally, principals are hesitant to be responsible for programs within their buildings when they cannot select the personnel and have at least limited control over the program's operation.

The planning and programming for the special education system is also adversely affected by the centralization of program control. It is easier administratively for the Division of Special Education to set up and run separate self-contained programs than to develop individualized supportive programs which must be integrated into the differing programs of some 750 elementary and middle schools in 32 districts and approximately 100 high schools. In fact, most of the Central Board's programs for the emotionally handicapped consist of self-contained classes and separate schools rather than resource rooms, itinerant teachers or other supportive services.*

The split between central and community based authority has created particular problems in coordinating the identification, evaluation, and referral of handicapped children. In theory, the central division is responsible for these functions; however, it is the local schools and districts that actually have the initial contacts with the child and are in the best position to anticipate school difficulties and handle them at the earliest stages. The Commissioner's decision in the Riley Reid case specifically dealt with the failure of this aspect of the present system and ordered the Board to establish a procedure for regionalizing the evaluation process.6) The Division of Special Education, in response to the Reid order,7) has suggested a system which would set up a committee on the handicapped in each community school district and in each high school district.**

It should be pointed out that the present New York City system under which the central board has primary responsibility for the handicapped child is the reverse of that which exists in most school districts in New York State. In those other districts the local district has primary responsibility for the education of such a child; where the local district cannot furnish needed special service the district uses programs provided by Board of Cooperative Education (BOCES).*** In its recent position paper on the education of children with handicapping conditions, the Regents affirmatively set forth that the "primary and basic responsibility . . . rests with the local school district" (emphasis added).8) That spirit is countermanded under the City's present system.

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*There are exceptions to this generalization. The Division of Special Education runs a vast speech program which through the Bureau of Speech Improvement works with some 56,000 children yearly, principally on an itinerant teacher basis. Most of the children are in regular classes. Recently a small Resource Room program for emotionally handicapped children has been initiated (there are now 6 to 8 such centers in the city).

** High Schools are organized in borough-wide districts.

*** Even under the BOCES system, there is a tendency, because of certain fiscal advantages, to rely on the BOCES rather than on district programs.

CATEGORIZATION OF SPECIAL EDUCATION PROGRAMS

The Division of Special Education organizes and administers programs for the handicapped on the basis of categories defined by handicapping conditions. Thus, the "emotionally handicapped," the "brain-injured," and the "mentally retarded" are all handled by separate bureaus and placed in separate programs. Children must satisfy the criteria set for a particular program. This stratification increases the delay in providing service to the child since inordinate time is spent obtaining an evaluation.

The children who must rely on overburdened public clinics and facilities are presented with special difficulties. During the waiting period, children may have to remain out of school or be inappropriately placed. Moreover, many children do not fit into such discrete categories and therefore cannot presently be placed in any public program. For example, efforts are just beginning to provide service for doubly and multiple handicapped children.

The requirement for a specific diagnosis of a particular handicapping condition does not appear justified by the present state of the art of special education and its ability to provide treatment programs differentially appropriate to specific conditions. Children with differing handicapping conditions may have similar educational needs, whereas children with similarly labelled conditions may actually have dissimilar needs.9) Categorization by rigidly specific diagnoses obviously can result in recommending a situation that is less than optimum for the handicapped child.

DIVIDED ADMINISTRATION OF PROGRAMS FOR EMOTIONALLY HANDICAPPED CHILDREN

An insurmountable obstacle to planning and providing a long-term educational plan for the emotionally handicapped child within the city system has been the fact that there have been two different offices within the Central Board which have the responsibility for programs for such children. Previously the Office of Special Education and Pupil Personnel Services (OSEPPS) had authority over classes and in-school programs for the handicapped; the Office of Special Schools administered the Special Day Schools for emotionally handicapped children, until recently the major city program for disturbed children. Last year (1973), as part of a major administrative reorganization, the Board of Education established one Division of Special Education and Pupil Personnel Services, which encompasses the functions of both of these offices. The Division of Special Education, in turn, recently set up a Bureau for the Emotionally Handicapped with responsibility over all programming for this category of handicap. However, it is questionable whether even such a reorganization at the top level will be able to overcome the engrained bureaucratic division, in light of the fact that the same personnel will continue to administer the programs, and particularly since the Special Schools have been in operation over 20 years and are probably resistant to change.

LACK OF INTEGRATION OF CLINICAL SERVICES

A serious problem in providing adequate coordinated programs for emotionally disturbed students with special needs is that the Bureau of Child Guidance (BCG), which supplies and controls virtually all mental health services in the city school system, operates independently of both the Division of Special Education and the community boards. BCG funding comes through the New York City Department of Mental Health and Mental Retardation (DMH) rather than through education funds. Thus, BCG is really under the joint jurisdiction of the Board of Education and DMH.* These two agencies have different priorities and goals. Clinical positions and programs have become a pawn in the jurisdictional struggle between them. As an example, for the past two years clinical positions have not been provided for most of the Board of Education's classes for emotionally handicapped children. Furthermore, clinicians involved in either special and regular school programs are not accountable to the school or programs in which they function, and are not integrated into the programs in any way which is comparable to the way clinicians function in the non-public sector.

DIVISION BETWEEN PUBLIC AND PRIVATE SECTORS

Education services for the emotionally handicapped are further fragmented by the fact that there is a lack of coordination between the public schools and the private sector, which in actuality provides a substantial percentage of the special education programs. These private programs in fact are, at present, largely public funded, principally through state tuition grants (other public funding sources are also involved). Although these schools presently provide a special education resource for emotionally handicapped children equal to that provided by the public sector, there is no conduit for referral and placement between the city system and these quasi-private schools. Children are placed in the schools through parent or other individual initiative. These schools are totally independent in their admissions practices, and no method is available to assure that children with the greatest need are placed in suitable programs even where available.

A further result of this fragmentation of responsibility, and of the fact that in most cases the parent has to pay tuition to supplement the tuition grant, is a discriminatory system whereby the child of the family with resources is served in the quasi-private system and the poor, minority, acting-out child or the child from a difficult family, is left to the public systems.

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*By funding mental health services in this manner, the city receives a 50% reimbursement from the state (the 50% reimbursement may be modified under Unified Services B.11 enacted in 1973, which provides for the option of a comprehensive total mental health plan financed under a complex formula).

CONCLUSIONS

The following problems, then, characterize the public school system for serving emotionally handicapped children.

a) Artificial division between the "normal" and "handicapped" child

Under New York City's partially decentralized and complex school system there is an artificial division in the responsibility for the education of "normal" and "handicapped" children. The Central Board of Education and the Chancellor are responsible for the educational needs of the "handicapped" child, and the Community School Boards for the needs of the "normal" child. The High School Division (a centralized agency) is responsible for "normal" children of high school age.

b) Remoteness of centralized responsibility

The Central Board's responsibility towards the handicapped is carried out through a remote centralized office, the Division of Special Education and Pupil Personnel Services, which theoretically is responsible for the needs of potentially over 100,000 children,10) coming from diverse communities (with varying needs and resources) located in all of the city's five boroughs.

c) Arbitrary division of responsibility within Central Board

Even within the Division for Special Education, the responsibility for the administration of programs for emotionally handicapped children has historically been arbitrarily divided between the Office of Special Schools which runs the Special Schools, and the Office of Special Education which runs special classes and programs.

d) Shared jurisdiction over supportive services

Adequate planning and programming for the needs of emotionally handicapped children are seriously impeded by the fact that mental health services provided by the Board of Education are under the administration of the Bureau of Child Guidance (BCG) which operates semi-autonomously from both DSEPPS and from local schools and community boards. Further, the Board of Education shares jurisdiction over BCG with the New York City Department of Mental Health and Mental Retardation.

e) Arbitrary system stratification

Programs for the handicapped are further stratified by a categorical system under which the Division for Special Education operates. Classes, programs, and bureau responsibility are organized on the basis of narrowly defined, rigid handicapping conditions.

f) Inadequate coordination with non-public facilities

The Board of Education relies heavily upon non-public programs to provide services for handicapped children; however, there is little coordination between public and private sectors, particularly in the processes of referral and placement.

Endnotes

[1] The New York City school system was decentralized by an Act of the State Legislature in April, 1969, providing for the establishment of 31 (now 32) community school districts within which elected school boards were given certain responsibilities for administering the elementary and middle schools. The statutory provisions governing the decentralized school system are set forth in N.Y. Educ. Law, Art. 52A. For a discussion of the subsequent relationship between the central board and the community districts see Michael A. Rebell, "New York's School Decentralization Law: Two and a Half Years Later," Journal of Law and Education, Vol. 2 No.1 (January, 1973), pp.1-39.

[2] N.Y. Educ Law, Sec. 2590-e.

[3] Under N.Y. Educ. Law, Sec. 2590-h, the Chancellor (chief administrative officer) of the Board of Education has "the power and duty to . . . control and operate" the high schools. The Chancellor administrates that authority through the Division of High Schools.

[4] Under N.Y. Educ. Law, Sec. 2590-h, the Chancellor has "the power and duty . . . to control and operate . . . all special education programs and services conducted . . . prior to the effective date of this article" in addition to "new schools or programs . . . as he may determine." The Chancellor exercises this authority through the Division of Special Education and Pupil Personnel Services. For an argument that it would not be a violation of that statute for community districts to administer special education programs, see Sec. IV, Chap.4.

[5] N.Y. Educ. Law, Sec. 4401 (1); Regulations of the Commissioner of Education, Sec. 200.1 (a).

[6] Matter of Reid, Dec. #8742 (Nov. 26, 1973).

[7] Board of Education of the City of New York, "Plan in Response to Reid," January 31, 1974, order #6.

[8] Regents of the University of the State of New York, The Education of Children with Handicapping Conditions, SED, November 1973, p. 5.

[9] A forthcoming study from the Department of Health, Education and Welfare's "Project on the Classification of Exceptional Children" deals with this issue, among others.

10) Fleischmann Report, Vol. II, p. 9.13.

IDENTIFICATION, DIAGNOSIS AND EVALUATION[1)]

The insufficiency, lack of coordination, and inappropriate response which are characteristic of the present New York City system for the education of the emotionally handicapped child, are particularly aggravated at the initial levels of identification, diagnosis, and follow-through.[1a)] The New York City Board of Education, as a school district, has an obligation to identify emotionally handicapped children in need of special education services and to provide suitable examinations, evaluations, and periodic re-evaluations for such children, as well as suitable placement.[2)] However, as was recognized in the recent landmark Reid decision, the system of identification, diagnosis, and placement is not functional and is in fact a "failure."[3)] The insufficiencies and failures of service at this level have an especially onerous impact on the economically deprived child who is dependent on the over-loaded public clinics and facilities to obtain diagnosis, and who often waits out of school or in a totally inadequate situation (such as truncated sessions, sitting in the guidance office), and on the child from the overwhelmed, "un-cooperative," or non-existent family, since inordinate individual initiative is required to coordinate the various aspects of the current system.

REID DECISION FINDINGS RELATING TO IDENTIFICATION, DIAGNOSIS, AND EVALUATION

In the Reid decision the Commissioner of Education made a specific finding that there were "undue delays in examinations and diagnostic procedures."[4)] The Commissioner also found that the City Board had misused the suspension and expulsion processes,[5)] that children had been placed on home instruction for improper purposes,[6)] and that children had unlawfully been "medically discharged" from school.[7)] The Commissioner further found that there was improper and conflicting census data on the number of handicapped children residing in New York City,[8)] and that there was "inadequate means of informing parents of processes relating to special education services."[9)] The Commissioner ordered remedial measures to be taken with regard to all the above improper practices.

The principal mechanism provided under the present state scheme for the coordination of evaluation and educational services for handicapped children and for protecting the status of handicapped children is the "District Committee on the Handicapped" mandated by the Regulations of the Commissioner of Education. The Commissioner's Regulations require that such a committee function in each school district.[10)] In Reid the Commissioner found that this "Committee" was a failure in New York City.[11)] Each committee on the handicapped is to be composed of a team of school professionals (such as a psychologist and a special education teacher) and is to be responsible for such functions as recommending evaluations and placements, reviewing diagnostic and other material, and yearly re-evaluation of the child's status.[12)] In New York City, the Centralized Division of Special Education (and its predecessor OSEPPS), working through the Bureau of Child Guidance and the Evaluation and Placement Units,* was considered to constitute the Committee on the Handicapped. The Commissioner held, in Reid, that "to be effective, such committee must function on a regional basis... "13) and he ordered that the Board of Education, in consultation with community boards, establish a procedure for regionalizing evaluation of the handicapped. In a plan submitted in response to that order, the Board of Education proposes to form Committees of the Handicapped in each community school district and in each high school borough district. These Committees shall be comprised of a school pediatrician, a BCG psychologist, a special education teacher from the Board's diagnostic service (the Evaluation and Placement Units), a member of district staff, and a liaison from the community school board.14) Thus, the Reid case has already initiated a reorganization of the present unworkable system.

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* These agencies will be more fully described below.

The Fleischmann Report describes many of the current insufficiencies and difficulties which prevent an accurate identification of handicapped children (such as teachers untrained in this area and the need for a screening process), and also describes the overall fragmentation of evaluation procedures in New York state and New York City in particular.15) Therefore this section of the report will be confined to briefly describing the process as it currently operates in New York City, and setting forth some of the salient difficulties as they affect economically deprived, emotionally handicapped children.

IDENTIFICATION

The major source for the discovery of emotionally handicapped children is identification by the classroom teacher of the child with acting-out, hyperkinetic, or other socially disturbing behavior. * When the child's behavior interferes with the functioning of the classroom, or otherwise harms or disturbs others, the school is forced to deal with that child's problem and normally will refer the child to whatever services may be available. According to personnel interviewed, the typical referral to a special education program or a mental health service is the acting-out, disruptive boy.** On the other hand, the emotionally disturbed withdrawn or quiet child who is not participating socially or academically, will characteristically be unnoticed. Because school failure is currently epidemic in New York City schools, even lack of suitable learning progress often will not provoke the school's attention.16)

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* This is not intended to imply that such behavior is always indicative of mental illnes, but only that such behavior forces a response.

** Personnel administering special education classes for the emotionally handicapped reported that because of this fact it was difficult to keep classes balanced in terms of sex and behavior pattern, and in most such classes observed by the authors, the overwhelming majority of pupils were boys. Madeline Dalton, the Director of the Bureau for Children with Retarded Mental Development (CRMD), suggested that the reason for the preponderance of boys in the CRMD classes is that disruptive children are most likely to be referred to these classes by the teachers. Similarly, directors of mental health clinics interviewed reported that it is primarily the acting-out child who is referred.

Other sources for the identification of emotionally handicapped children in need of special education services are:

1) Some parents, dissatisfied or concerned with their child's school adjustment, initiate planning for such services with the school and seek out evaluation and placement themselves. Clearly such initiative is most likely to occur for the children of families with financial and other resources, and where families are informed about special education possibilities. On the other hand it is unlikely to happen where families are overwhelmed with problems, or mentally ill themselves, or otherwise unable or unwilling to focus on their child's difficulties.

2) Outside agencies who have contact with the child or family in a non-school context may follow through with the school. Too often, though, there is little contact between such agencies and schools, and an agency, even when treating or serving a child, may be totally unfamiliar with the child's school experience.

3) Attendance personnel following up on children who are either not enrolled, or not attending, may identify children with serious problems, including disturbed children kept out of school by parents, or refused enrollment by schools, school phobic children, and other children whose emotional problems are reflected in truancy. However, the inadequacy of attendance service17) has resulted in a gross failure to follow up in such cases. For instance, the Bureau of Attendance itself feels that 20,000 high school and 10,000 elementary and middle school truants are written off yearly by the school system and the Bureau of Attendance itself reports a yearly total of 13,000 children "not found." 18)

4) Self-referral by older students or adolescents themselves may seek out help. But this is particularly difficult in the isolated institutional atmosphere of most city high schools.

5) The Board has a pilot identification program which seeks out and identifies pre-school children from disadvantaged areas (through hospitals, pre-school programs, and other agencies). The program, which aims at working with learning disabilities and related problems at an early age and planning and providing for suitable special education placement where necessary, serves a projected 300 to 400 children. It is funded through State Urban Aid.

For those children who are identified as having emotional problems, the normal chain of referral is to the school guidance counselor (or in some cases to school supervisory personnel). The counselor (or supervisor) will normally follow through with one or more of the following steps. The choices made are more dependent on what resources happen to be available at the given moment to that particular school or community, and on the resourcefulness and ingenuity of the counselor (or parent or others involved), than on the appropriateness to the needs of the particular child involved. And in many cases no steps are taken -- or none are taken until the situation is totally aggravated.

STEPS WITHIN THE SCHOOL

1) Counseling the child, family, and sometimes the teacher concerned;

2) Referral to the school principal;

3) Change to a different class;

4) Arranging remedial or other supportive help (such as group counseling) where available;

5) Pre-suspension conference with parents;

6) Truncated (part-day) session for child -- or keeping child in guidance office part of the day;

7) Placement in school or district-run special class located within the home school (normally clinical evaluation is not required);

8) Principal's emergency suspense (can be no more than five days) based on serious disorderly behavior:

9) Referral to BCG clinician servicing the school;

10) Referral to agency for treatment while continuing to attend home school.

REFERRAL FOR PLACEMENT OUTSIDE THE HOME SCHOOL

Such placement is normally coordinated by the district guidance coordinator or district personnel:

1) Transfer to another regular school in the district;

2) Placement in a district administered special program located in another district school (normally does not require clinical evaluation);

3) Special Day School for Socially Maladjusted (normally does not require clinical evaluation; does require a history of acting-out behavior and prior efforts to work with child in a regular school);

4) Superintendent's Suspension, hearing and suspension may be based on serious disorderly behavior (may be over five days and lead to alternative placement);

5) Placement in special education program administered by the Division of Special Education;

6) Home-instruction, "medical discharge" (latter now discontinued);

7) Exemption;

8) Alternative education programs (at the high school level);

9) Early discharge (at the high school level).

Parental consent is normally obtained for most of the above steps (with the exception of suspensions and exemption); however, the meaningfulness of such consent is questionable in light of the lack of real options open to the parent and the failure to provide adequate counseling and information to the parents, or students (in the case of older children), as to what other alternatives might be available.18a) Many principals contend that consent is not required for a change in placement within the school building or organization, but normally will, in any case, obtain such consent. The New York State Commissioner of Education has held that a hearing such as is required prior to a suspension is not required prior to a transfer for educational reasons to a program which is substantially equivalent.18b)

Diagnostic Evaluation

The Regulations of the Commissioner of Education require that each school district provide a comprehensive examination for each handicapped child, including the emotionally handicapped child. The regulations require a physical examination, an individual psychological examination, a social history, and "other suitable examinations and evaluations as necessary to ascertain the physical, mental and emotional factors which contribute to the handicapping condition."19) In addition, the regulations also provide for evaluations and re-evaluations by appropriate physicians and clinicians, for placement in certain special education programs and for exemption from school.20) Furthermore, the Education Law under Sec. 4404 (4) also requires that suitable examinations be administered to those children not attending special classes who "fail" or "underachieve."21)

Currently, however, there is no systematic comprehensive evaluation procedure available for those children who are identified as possibly emotionally or similarly handicapped. It should be pointed out as a caveat that the descriptive diagnosis of emotional disturbance is necessarily a subjective one, and that this is an area where there is great potential for abuse. Some pupil personnel workers interviewed suggested that in many cases the diagnosis was not helpful in working with the child, that different diagnoses on the same child were often contradictory, and that it was important not to stigmatize a child as "emotionally handicapped." When children are referred for examination it is normally to one or a combination of the following resources:

1) BCG - The Bureau of Child Guidance, the clinical arm of the Board of Education,22) has a clinical staff comprised of psychologists, social workers, and limited psychiatric time, and can provide a social history, a psychological and in some cases a single psychiatric examinaton of a child. Usually such an

examination takes place in the child's school or district. However, BCG is plagued by long waiting lists.23) For instance, BCG was overwhelmed recently by the necessity of re-evaluating children in the CRMD program (some children had not been re-evaluated in five or six years). BCG must evaluate the child for placement in certain special education programs or else review the clinical data and recommendations provided by other sources: CRMD classes, B Center classes for moderately disturbed, home instruction for reasons of emotional disturbance, and exemption from school for reasons of emotional disorder. BCG would also normally be asked to evaluate a child being suspended from school where assignment to a Special Day School is being considered,24) although such an evaluation is not ordinarily requested where there is a voluntary transfer to a Special Day School without a suspension occurring.

2) Evaluation and Placement Units (E&P) - E&P Units, consisting of a multi-diagnostic team of BCG clinicians, guidance counselors, special education teachers, para-professionals, and some neurological services, were set up as a federally funded pilot program (which has now been taken over by tax-levy funds) to screen the huge backlog of children suspected of being brain-injured. There are currently five borough-organized E&P centers. The Board plans to open four new centers.

E&P was also designed to overcome the previous categorization of diagnostic services, whereby each separate special education program had its own screening service, and children were, as a result, referred from one service to another. Now E&P is the only screening unit for placement in classes for the brain-injured (this is E&P's primary concentration) and aphasic, and currently, for classes for the severely emotionally handicapped. An E&P unit may also place a child in a B Center or a CRMD class. Occasionally it will refer a child to a Special Day School, and may also recommend private school placement, although usually the parent has to find his own school. Referrals to E&P are mostly from BCG and from clinics and agencies, but some children are also referred directly from schools. The E&P examination procedure includes a diagnostic classroom which the child attends for several days, giving an opportunity to assess the child in a classroom setting. Educational prescriptions are included in E&P's recommendations.

However, E&P has been overwhelmed with backlogs and waiting lists. The latest reported waiting list was 1,854 25) and children may wait for six months for the evaluation only to be told that because of having a multiplicity of handicaps, or because their behavioral problem is too difficult, they are not eligible for the available classes.* Furthermore, E&P requires that a case be referred along with the underlying clinical diagnostic data which E&P reviews.

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* E&P, partly as a result of finding that it was unable to place many such children, has opened undifferentiated classes on a demonstration basis, serving about 100 children. See Sec. IV, Chap. 1.

However, obtaining a neurological report, in particular, is a serious obstacle for a child dependent on public clinics, because there are few neurologists available, and getting the neurological examination itself may take many months. To many pupil personnel workers interviewed, E&P was seen as the very roadblock that it was created to avoid.* Moreover, some teachers and administrators of special education programs had not found the prescriptive diagnosis to be helpful, particularly when there is no carry-over relationship between the diagnostic team and the classroom teacher.

3) Outside Agencies** - Referrals for diagnostic evaluation are frequently made to outside agencies,clinics, and hospitals, either as an alternative or in conjunction with a BCG or E&P evaluation (and of course some parents use private physicians and clinicians). In fact, the insufficiency of Board of Education clinical service is such that they are dependent to a great extent on such resources to provide evaluations. For instance, BCG would not be able to provide a neurological examination. The extent of the availability of such agency services varies greatly throughout the city. Among the agencies, the child may be referred from one to another to get a complete examination. Whether a child can obtain service depends on many factors, such as whether he lives in a federal Mental Health Catchment area, for example.

In many instances children appear to be referred to agencies for a specific purpose such as to be placed on drug therapy,+ for a recommendation for home instruction, for placement in a 4407 school, or (previously) for medical discharge. The evidence is that, with few exceptions,26) there is little continuing contact between the agencies and the schools, even where a child is being treated by an agency on an on-going basis. Personnel at the schools complained that the agency personnel never come to the schools and never see the child in the classroom context; on the other hand, schools frequently do not contact the agencies even when a child is having difficulties in school, unless the school wants approval for a certain step, such as assignment to a Special Day School.

The system of identification, diagnosis, and referral for placement is minimally workable for the child of a family with extensive financial and other resources who: 1) can obtain an adequate diagnosis from a private physician or follow through with the repeated visits and waiting periods involved in putting together a comprehensive evaluation from public resources, 2) can initiate planning with the school when they find their child in difficulty, or 3) can follow through on finding adequate placement in the public sector or find some placement in a private school and obtain the requisite diagnosis to obtain a tuition grant. The system, which does not provide needed assistance, guidance, or information, is barely manageable for such a middle-class or affluent family, and is intolerable for the poor, and above all, the overwhelmed family.

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* In one district (Dist. 30), it was reported that there were unused seats in the brain-injured classes simultaneous with a long waiting list of children to be evaluated.

** The limited scope of this report clearly precluded any major investigation of the myriad of outside agencies providing diagnostic service to children.

+ The director of one mental health clinic suggested that part of the reason almost all of the younger children in their case-load were receiving medication was that the schools referred mainly "hyperactive," "acting-out" children.

SCHOOL EXCLUSIONS AS PART OF THE IDENTIFICATION AND EVALUATION PROCEDURE26a)

Suspensions

As described above, the identification of emotionally handicapped children in the New York City Public School System is frequently precipitated by socially disturbing behavior. For many such children the initial response of the system is a disciplinary suspension from school. This is either an emergency Principal's Suspension (of five days or less), or a longer duration Superintendent's Suspension (a fair hearing must be provided by the fifth day of such a suspense). Such suspensions are authorized where a student's behavior is disorderly or dangerous.27) Even where the Superintendent determines, after a hearing, that a suspension must continue, there is theoretically an obligation to provide the student with alternative education-- at least when he is of compulsory school age.28) However, case histories of children demonstrate that suspended children often remain out of school for months -- and sometimes for years -- without any educational service except home instruction, and sometimes not even that. There are at least 16,000 Principal's Suspensions annually, the overwhelming percent at the elementary and middle school level (seemingly at least 90%); and approximately 1,200 Superintendent's Suspensions annually. However, nearly half of the longer duration suspenses are at the high school level.29) Further, there is a disproportionate suspension of minority group students.30)

Although not all suspensions involve emotionally disturbed children, increasingly it is the problems of such children which arise in the suspension context.* A Principal's Suspension is normally concluded with a guidance conference, attended by the parents. This conference, and the Superintendent's Hearing, are often used to bring personnel together to plan for alternatives for the child in question, or to refer the student for evaluation. In many cases it is apparent that the inter-disciplinary consultation and planning could well have been done without any need to exclude the child from school, and, in fact, that many previous opportunities to provide help for the child had been ignored. There are wide variations among community school districts as to the degree towhich suspensions are used. Principal's Suspensions varied in 1972-73 from a low of 137 (District 1, Manhattan) to a high of 1,257 (District 10, Bronx); 12 of the community school districts had no district suspensions during the period September through May 1972-73. On the other hand, District 10 had 138 district suspensions during that same period, and several districts had between 40 and 70.31) Some districts have an absolute policy against district suspenses,* whereas other districts use the hearing as a force to bring the parents and school together. The fact is, whether or not suspension takes place, this in no way affects or publicizes what real alternatives are available for the suitable education of the child involved.

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* According to Miriam Thompson, Coordinator of the Queens Lay Advocate Service, which has represented students at some 450 suspension hearings since February 1970, issues arising at suspensions have increasingly involved the special needs of emotionally and similarly handicapped poor children rather than the participation by students in free speech and political activities.

Medical Discharge

Until medical discharge was barred by the Commissioner in the Reid case,32) that process was used systematically to remove emotionally handicapped children from the school system. More than 4,000 children were "medically discharged" for periods of two months or more annually33)--probably nearly half for reasons of emotional handicap.34) Medical discharge for reasons of emotional disturbance was permitted by the Board of Education only where recommended by a physician (normally a psychiatrist) and a psychologist, and with parental consent. Medical discharges occurred in all the community school districts (an average of 56 discharges per school district in 1972/73). Over one-half of the medical discharges were from the high schools.35)

Home Instruction36)

Prior to the Reid determination, the home instruction program was a major avenue for excluding emotionally handicapped children from the school system. Although home instruction was designed as a program for homebound children physically unable to attend school, and was in fact administered by the Bureau for the Physically Handicapped (BPH) using teachers trained as homebound teachers,** it had become one of the Board's principal programs for emotionally handicapped children. Normally there have been between 3,000 and

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* The District Guidance Coordinator in one district (15) told us that this was district policy.

** New York City home instruction teachers are normally licensed as teachers of the homebound and do not have particular training to work with emotionally handicapped children.

3,500 children on home instruction at any one time. About half of these were on the homebound program because of their emotional disturbance. In recent years there has been a steady increase in both the number and percentage of emotionally handicapped children, and such children normally remain on home instruction longer than other children (some as long as three years). The children on home instruction, according to BPH, includes children who are violent and disruptive, school phobic children, and children awaiting residential or other placement. Presumably all medically discharged children should be receiving home instruction37) (as well as suspended children) but, according to case histories, this has not been the case.

Home instruction for reasons of emotional disturbance must be recommended by a clinic or a psychiatrist, must be with parental consent, and must be approved by BCG.* The child is supposed to be in continuing treatment, and BCG is responsible for checking periodically on the status of the therapy.38) By all accounts the review has not been taken seriously by either BCG or the clinicians involved.

In Reid, the Commissioner made a specific finding that children had been placed on home instruction in violation of the purposes of such instruction,39) and held that home instruction was allowable only where the child was unable to benefit from classroom instruction.40) In effect, home instruction should no longer be a permissible alternative for the overwhelming number of emotionally handicapped children.** In fact, personnel in BPH themselves have felt that home instruction children could be returned to school if suitable programs were available. BPH itself developed several pilot programs in cooperation with other agencies to demonstrate that this was possible, even for deeply disturbed children.+

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* The Board of Education will provide home instruction only if the child is chaperoned by a responsible adult. In some cases this has meant that the parent has to stop working to stay home with the child

** Home instruction is particularly inappropriate for an emotionally handicapped child who needs to develop social relationships and work within a group, or for a child with learning problems which require specific education techniques, and is particularly unsuitable and aggravating for a child whose problems are a product of family situation, since there is no opportunity to be away from home.

+ Programs described by the Board include 1) a program located in the Bronx Psychiatric Hospital using a home instruction teacher and hospital clinical services with a one-to-one ratio (serving 16 children); 2) a program in Soundview Throgs Neck Mental Health Center, serving older adolescents (16-21) on an intensive everyday program (9 students); 3) a program in Coney Island Mental Health Clinic, serving 5 highly disturbed children through the coordinated efforts of educational, recreational, and mental health workers; 4) a program in conjunction with the Federation of the Handicapped, students attending on a two-day-a-week basis, meeting in small craft and recreation groups (20 children); 5) a program in conjunction with BCG for school phobic and highly disturbed students who cannot tolerate any socialization. Children are seen on a one-to-one basis, but are together with others to acclimate them to being in a group (number served unknown).

Exemption

In *Reid* the Commissioner held that the medical discharge "was not provided for by statute" and that there were only two avenues by which a child could be excluded from school: 1) the disciplinary suspense procedure under Education Law, Sec. 3214, and 2) the exemption procedure, "*in the most extreme circumstances*" (emphasis added).[41] In the past, the exemption procedure was rarely used in New York City,* but with the elimination of the medical discharge it can be anticipated that there will be an expanded use of this process. The statutory authority to exempt children from instruction is Education Law, Sec. 3208, providing that "(a) minor . . . shall be required to attend upon instruction only if in proper mental and physical condition," and "shall not be permitted to attend" if his "mental or physical condition is such that his attendance upon instruction . . . would endanger the health or safety of himself or of other minors, or who is feebleminded to the extent that he is unable to benefit from instruction."[42] In *Reid* the Commissioner stated that handicapped pupils may be exempted only in the most extreme circumstances, and that handicapped students "must be provided with educational services if they were capable of benefitting from them."[43] Where a child is exempted, alternate services -- home instruction or special education -- are not provided.

The Commissioner has promulgated specific procedures which govern exemptions.[44] Exemptons for emotional disorders are as follows:

1) There must be a careful examination by a school physician;

2) The examination and recommendation for exemption must be made by a qualified psychiatrist *and* a qualified psychologist or approved clinic;

3) The above findings must be received by the District Committee on the Handicapped who must make a written recommendation of exemption or of the provision of other services to the chief administrative officer of the District -- in New York City the Chancellor. (At present in New York City exemptions appear to be approved by BCG, reviewed by the Division of Special Education, and then recommended to the Chancellor.)

4) The exemption request must be submitted to the Bureau of School Social Services of the State Education Department with an explanation why mandated services cannot be provided. However, that Bureau only reviews the process to determine whether correct procedures have been followed, and does not approve or disapprove the professional recommendations of the clinicians.[45]

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* According to the Bureau of School Social Services (SED) a total of some 30 New York City pupils are exempted, out of a total in the state of 700 to 800.

5) The notice of exemption is sent to the parent after approval by the Bureau of School Social Services.

6) An exemption for emotional disorder must be reviewed by a psychiatrist and psychologist after six months.

Thus the exemption procedure as designed by the Commissioner is seemingly totally a matter of professional judgment. Although thus far in New York City there has been no real experience with exemption and it is not possible to estimate whether it will be used on a restricted or wide basis. Unlike the medical discharge procedure, there is no necessity for parental consent, and in fact, the parent is only informed when the exemption has already been approved by the state. There is no provision for a hearing on the exemption, or any avenue for the parent to object to the clinicians' recommendation. In fact, in one case* where the parents did appeal to the Commissioner challenging the school clinicians' exemption recommendation (with the family's psychiatrist finding that the child could benefit from a regular class), the Commissioner upheld the exemption, holding that it is well settled that a board may prefer the testimony of its own experts.(46)

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*Not involving New York City.

CONCLUSIONS AND RECOMMENDATIONS

The system of identification, evaluation, and placement, as it presently operates, may be minimally workable for the family with extensive financial and other resources, who can 1) discern their own child's needs, 2) obtain an adequate diagnosis from a private physician or clinician, or follow through with the repeated visits, delays, and expenses involved in relying on public facilities, 3) initiate planning with the school when they see their child in difficulty, and 4) as a final resort, find some placement in the private structure, although even for the family with considerable assets, the current system is needlessly frustrating and wasteful.

However, for the child from the poor family and above all from the family overwhelmed with problems, the present evaluation and placement system is totally non-functional. As a result, the emotionally handicapped child from such disadvantaged circumstances: 1) will typically be assessed only in terms of his socially disturbing behavior (even where there are other clear signals of failure); 2) may spend months or even years in unsuitable situations, or be excluded from school to await diagnosis and placement (with attendant regression and compounding of emotional difficulties and learning problems); 3) needlessly becomes involved in school suspensions or often becomes involved in the criminal justice process; and 4) even when finally placed in a special education program, will be placed in a program which happens to be available and which the school personnel happen to be aware of, rather than a program designed for the child's needs.

Two basic reforms would substantially contribute to overcoming the fragmentation, waste and inappropriate treatment of handicapped children under the present system: 1) the organization of community centered resource and advocacy centers for children with special needs (a reform which is at least begun with the Commissioner's order for regionalized Committees on the Handicapped, and 2) the establishment and implementation of due process systems to protect and enforce the educational rights of handicapped children.[47]

1) District Committees on the Handicapped

The Board, in response to the Reid order for the regionalization of Committees on the Handicapped, has proposed that a committee be formed in each community school district and in each high school borough district. Although the creation of such community based committees is a significant reform, the Board's plan is deficient in several important respects:

a) The committee is to be comprised of the following: 1) a school pediatrician; 2) a BCG psychologist; 3) an E&P special education teacher (the chairperson of the committee); 4) a member of the staff of the community school board; and 5) a liaison person designated by the community school board.48) With the exception of the liaison person, these are all school system professionals with other full-time functions. With BCG and E&P already heavily overloaded, it is questionable how such personnel would be available. It seems probable that if the committee functions without any full-time staff, it will simply turn into a rubber-stamp operation.

Except for the community district liaison person, there is no avenue for consumer, parent, or community input into the committee. Although it may be inappropriate and even improper for non-professionals to participate in reviewing the status of individual children (raising questions of confidentiality),* consumer representatives are needed for those aspects of the committee's work which pertains to community planning.

b) The committee as designated is limited to a reporting-back function. The Plan states that "(t)he committee's major function will be to report" to the "Executive Director of the Division of Special Education" and the "Community School Board" on the status of all handicapped children in the school district (emphasis in original).49) Other specific duties are: 1) to compile and maintain a register of all identified handicapped children in the district; 2) to periodically review the status of all children receiving special education, or recommended for exemption; 3) to draw upon available resources for the conduct of these reviews and assess needs for additional resources where existing resources are not adequate; 4) to conduct regular meetings to review placement and/or program recommendations for all handicapped children; and 5) to report regularly and on demand to the Executive Director and to the Community School Board, through the liaison member, on waiting lists, the status of resource requirements and special problems. The committees should have the opportunity and responsibility of planning affirmatively for their respective communities.

The committees, to be effective, must also serve the following functions:

a) They should be a resource and coordination service for children with special needs. The committee should have knowledge of all diagnostic and placement services available in the community (and for children with unusual needs, the services available throughout the city or elsewhere, including residential placements and the private sector). Clearly to fulfill such a function for the potential number of handicapped children in a school district of 25,000 (estimated at 9.3% of the school population)50) requires adequate full-time staffing.

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*A bill passed by the 1974 New York State Legislature, which would have required parents to be included on state-required Committees on the Handicapped, was vetoed by the Governor for those reasons.

b) The committees must take on a planning and advocacy role on behalf of children with special needs. The committees should determine priorities of need within their own communities consistent with the over-riding mandate that all handicapped children must be provided with a comprehensive diagnosis and suitable placement.

To fill such a function, the committee cannot be comprised of professionals only, but necessarily must include parent representation -- principally parents of children in public school classes for the handicapped. The committee should also include parents of children in regular school programs (reflecting the fact that there is no hard distinction between these two classifications). It should include a member, not just a liaison designate, of the community school board, to assure that the boards will be informed and educated to their responsibility for the needs of these children. And finally the committee should include representatives of the private sector (clinics, agencies, and schools) since the board actually relies on these institutions to provide full service. Furthermore, functions and programs, in regard to high school age students, should not be divided away from the community district committee to a separate high school committee. To do so would simply add fragmentation which would be a barrier toward providing a continuation of service and long-term programs for the students. For example, the committee should coordinate the transition from lower school to the appropriate high school program.

2) Due Process and Grievance Procedures

The availability of due process procedures in relation to special education placement, and of avenues for parents, students, or their representatives to have grievances heard is important both as a protection for the individual child involved, and as a monitor on the quality of the special education system. Such "due process" protections have been included in the relief ordered by several federal courts in recent landmark right-to-education cases.51)

Currently, in New York City and State, there is no systematized fair hearing system provided for either exclusions from the school system through the exemption procedure or special class placements for educational reasons. The disciplinary suspension hearing rights only apply to disciplinary processes, not educational decisions. Protections are afforded in connection with special education assignments and exemptions (as laid out earlier in this section), but they are all requirements for professional approval. In New York City, the Division of Special Education does require parental consent for the placement of children in some special classes (including most classes for the emotionally handicapped), although under current interpretations by the Commissioner of Education, neither consent nor a fair hearing is required.52) If so moved, a parent may make a complaint about an improper placement to the Division of Special Education, the Chancellor, the Board of Education, and ultimately to the Commissioner of Education.53) However, this system places a heavy burden on the parent and is not workable.

Failure to provide notice and a hearing prior to exemption clearly violates procedural due process standards set forth by both the Supreme Court and lower federal courts.54) Special class placement, particularly in the context of the compulsory school law which requires attendance, is necessarily subject to similar due process standards to avoid stigmatization for the child.

A hearing procedure should be set up, probably at the community district level, and should be a function of the Committee on the Handicapped with the attendant rights of notice, counsel, or representation, plus the right to confront witnesses (in this case the expert witnesses), introduce evidence, and the right to obtain and present an independent diagnosis. The procedure should provide for affirmative complaints, such as the failure to place a handicapped child in an appropriate program, the failure to place the child in the least restrictive program (a supportive rather than a self-contained program), and the failure of the program itself to provide appropriate services, as well as the right to challenge the diagnosis of handicap.

It should be recognized that the overwhelming number of placements will be by consent, and the due process machinery described would not be a cumbersome interference with the operation of the school system. It is necessary, furthermore, to be cognizant of the limitations of such "protection," particularly for poor children, when legal and clinical services are already overburdened and few advocates are available.* In the context of a rapidly expanding special education system, however, it is necessary to provide this opening, albeit limited, for protecting the rights of the children involved.**

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*Recently the Division of Special Education has instituted a "hot line" telephone number to process the complaints and requests of handicapped children. However, this hot-line is staffed by one social worker, clearly an incomplete solution to the special education coordination and advocacy needs for New York City.

**Recently enacted federal legislation may in fact mandate that districts receiving federal aid provide such due process protection for handicapped children (P.L. 93-38).

Endnotes

[1] This section is based in part on interviews with, and information provided by: Mr. Martin Greenstein, Assistant Director of the Bureau of Child Guidance (BCG); the directors of two BCG Centers; Dr. Joel Rosenheim and Murray Pescow, Clinical and Administrative Directors at Evaluation and Placement (E&P); and Sidney Rabin, the Coordinator of the Brooklyn E&P Unit; personnel at three New York City Mental Hygiene Clinics (Lutheran Medical Center Mental Health Clinic, Brooklyn; Maimonides Medical Center Community Mental Health Service, Brooklyn; and Queens Child Guidance Center, Jamaica Center, Queens); additional information was obtained through interviews with two community school district guidance coordinators (Districts 10 and 15) and six guidance counselors functioning in different schools and districts, two BCG social workers, as well as other personnel interviewed in the course of this report. Conclusions were also drawn from ASFEC's Advocacy Unit's own experience with children referred to them.

[1a] A recent study identifies these problems as characteristic of *all* school related health services in New York City (Citizens' Committee for Children of New York, Inc., *Change Is Overdue*, April, 1974).

[2] See N.Y. Educ. Law Sec. 4404 (1) and 4404 (2). Sec. 4404 (1) reads as follows:

> The board of education or trustees of each school district shall ascertain under regulations prescribed by the commissioner of education and approved by the regents of the university, the number of handicapped children in such district under the age of twenty-one years.

Also, Regulations of the Commissioner of Education, Sec. 200.2 pertaining to examinations, evaluations and recommendations reads:

> Examinations, evaluations, and recommendations. (a) Each school district shall provide for each handicapped child a physical examination consistent with the provisions of section 904 of the Education Law, an individual psychological examination by an approved psychologist, social history, and other suitable examinations and evaluations as necessary to ascertain the physical, mental and emotional factors which contribute to the handicapping condition. Any other material pertinent to the child's learning characteristics shall be reviewed and evaluated.
>
> (b) Each school district shall establish and maintain a committee, or contract with a board of cooperative educational services to secure the assistance of such a committee, to include a qualified school psychologist, a teacher or administrator of special education, a school physician and other responsible school authorities designated

by the chief school officer, whose responsibility it is to review and evaluate, at least annually the status of each pupil within the school district who is designated "handicapped." The district shall file annually, with the Commissioner of Education, the names and qualifications of the members of such committee. This committee shall also:

> (1) Review and evaluate all relevent information pertinent to each handicapped child, including the results of physical examinations and psychological examinations and other suitable evaluations and examinations as necessary to ascertain the physical, mental, emotional, and cultural-educational factors which may contribute to the handicapping condition, and all other school data which bear on the pupil's progress.
>
> (2) Make recommendations to the chief school officer or his designated subordinate as to appropriate educational programs and placement, and as to the advisability of continuation, modification, or termination of special class or program placements.
>
> (3) Determine the frequency and nature of periodic re-evaluations of handicapped pupils by appropriate specialists, with the provision that each child in a special class be re-examined by a qualified school psychologist at least once every three years. Upon application and justification approval may be granted for variance.
>
> (4) Make, or have made, periodic evaluations of the adequacy of programs, services and facilities for handicapped children.
>
> (5) Report periodically, but at least annually, to the chief school officer who shall transmit such report to the State Education Department, the status of each handicapped child and the status of programs, services, and facilities made available by the school district.

[3] Matter of Reid, Dec. #8742 (November 26, 1973), p. 2

[4] Ibid, p. 4, finding 1.

Endnotes

[5] *Ibid.*, p. 4, findings 10 and 7. The Bureau of Attendance reports a total of 1017 Superintendent's Suspensions in 1971/72, and 1,272 in 1972/73; and 16,871 Principal's Suspensions (five days or less) in 1971/72 and 16,818 Principal's Suspensions in 1972/73.

[6] *Ibid.*, p. 4, finding No. 5. According to the Bureau of Home Instruction on an average of over 3,000 are normally on home instruction, about half of these children because of emotional handicap.

[7] *Ibid.*, p. 4 According to the figures obtained from the Bureau of Attendance, a total of over 4,000 children a year are "medically discharged." These figures did not discriminate between physical and emotionally handicapped children. Many of these children do not even receive home instruction.

[8] *Ibid.*, p. 4, finding 8.

[9] *Ibid.*, p. 4, finding 9.

[10] Regulations of the Commissioner of Education, Sec. 200.2 (b); the State Education Department has also issued further explanatory guidelines to school districts entitled "Guidelines Concerning the Committee on the Handicapped" (undated, mimeographed).

[11] *Matter of Reid*, p. 5.

[12] Regulations of the Commissioner of Education, Sec. 200.2 (b).

Endnotes

[13] Matter of Reid, p. 5.

[14] "Plan in Response to Reid," Board of Education of the City of New York, Office of Special Education and Pupil Personnel Services, January 31, 1974.

[15] Fleischmann Report, vol. II, p. 9.20ff.

[16] In illustration, 68% of the students tested for the 1972/73 school year are below grade level in reading. "Pupil Reading Achievement in New York City," Board of Education, January, 1974.

[17] For further discussion of truancy and lack of attendance service see Sec. III, Chap. 3.

[18] Bureau of Attendance, "Discharge of Public School Pupils by Cause and School Levels, 1972/73."

[18a] See Schneckloth v. Bustamonte, 412 U.S. 218, (1973) in which, in a case involving a consented search of a car, the Court stated at p. 248:

> The traditional definition of voluntariness we accept today has always taken into account evidence of minimal schooling, low intelligence, and the lack of effective warnings to a person of his rights; and the voluntariness of any statement taken under those conditions has been carefully scrutinized to determine whether it was in fact voluntarily given.

[18b] See Endnote 52.

Endnotes

[19] Regulations of the Commissioner of Education, Sec. 200.2(a).

[20] As an example, for CRMD placement there must be a comprehensive examination, including an individual psychological (Regulations of the Commissioner of Education, Sec.200.2); all children in special programs for the handicapped must be re-examined by a qualified school psychologist at least every three years [Sec. 200.2(b)(3)]; to receive a tuition grant in a special education private school, "adequate medical and/or psychological examinations" must have been made [Sec. 200.4 (a)(4)]; for exemption for mental or emotional disorder there must have been an examination by a qualified psychiatrist, psychologist, and by a school physician [Sec. 101.4 (3)(i)].

[21] As interpreted by the Regulations of the Commissioner of Education (Sec. 203.1) the "Children Who Fail" mandate applies to pupils who have failed in two or more subjects for a year; or who, in their teachers' judgment, have not achieved a year in accordance with their capacity. The initial examination is to be by a licensed physician, and other suitable or necessary examinations are to be considered.

[22] See Sec. III, Chap. 3 for a more extensive discussion of B.C.G.

[23] *Fleischmann Report*, vol. II, 9.22.

[24] *By-Laws*, Board of Education of the City of New York, (Dec. 1952, amended June, 1964), Sec. 46, p. 13, provide that BCG "shall investigate, diagnose, and study all cases of maladjusted children referred to the bureau by the Superintendent of Schools. With respect to each case, the bureau shall report to the Superintendent of Schools its investigation and diagnosis together with the treatment and instruction the bureau recommends."

[25] "Plan in Response to *Reid*."

Endnotes

[26] Maimonides Hospital, Brooklyn, for example, has been involved in the development of comprehensive school programs aimed at minimizing learning problems.

[26a] For a comprehensive report on the exclusion of children (including emotionally handicapped children) under the operations of another big city public school system, that of Boston, see, The Way We Go To School. (A Report by the Task Force on Children out of School, Boston, 1970.)

[27] Suspension of students in the New York City public school system, both principal's emergency five-day suspenses and longer duration superintendent's suspenses are authorized and governed by state statute [N.Y. Educ. Law, Sec. 3214 (3)] and by regulations promulgated by the Board of Education and the Chancellor [By-Laws of the Board of Education, Secs. 90.42 and 90.43; Board of Education Spec. Circ. No. 103 (1969/70)]. The statute and regulations provide the due process protections of notice, right to counsel, and right to question witnesses in regard to the superintendent's suspense. However, according to Miriam Thompson, Queens Lay Advocate Service, most students apparently do not obtain counsel. For a discussion of student rights in the New York City School System, and of suspension procedure in particular, see Ira Glasser and Alan H. Levine, "Bringing Student Rights to New York City's School System," Journal of Law and Education, vol. 1, No. 2, 213-229.

[28] N.Y. Educ. Law, Sec. 3214 (3); Spec. Circ. No. 103 (B). To the effect that the quality of services at an alternate program may be considered judicially, see Hunt vs. Wilson, 72 Misc. 360 (Sup. Ct. Monroe Co., 1972). The State Commissioner of Education has held that there is no right to an alternate educational program where the suspended student is above the compulsory school age: Matter of Gaines, 11 Ed. Dept. Rep. 129 (1971); Matter of Chipman, 10 Ed. Dept. Rep. 224 (1971); Matter of Reid, 9 Ed. Dept. Rep. 166 (190), app. to rev. dis., 65 Misc. 2d 718 (Sup. Ct. Albany- 1971) (holding the Commissioner's determination not arbitrary). The Commissioner's limitation to the compulsory school age is open to question since the New York Education Law provides a right of attendance in the public schools to the age of 21 (N.Y. Educ. Law, Sec. 3202). The Commissioner has stated that the district should "consider any reasonable assistance which might be offered to enable a petitioner to complete his education," Matter of Chipman, p. 225.

[29] Data based on summaries kept by the Bureau of Pupil Accounting and the Bureau of Attendance, "Citywide Summary of Superintendent's Report of Pupil Suspensions," period ending April 1973.

Prin. Suspense	Total	H.S.	Source of Information
Sept.-May 72/73	16,007	896	B. of Pupil Acct.
Sept.-June 72/73	16,818	-	B. of Attendance
Sept.-June 71/72	16,871	1,721	B. of Attendance

Superintendent's Suspense	Total	H.S.	Source of Information
Sept.-May 72/73	1,159	553	B. of Pupil Acct.
Sept.-June 72/73	1,272	-	B. of Attendance
Sept.-June 71/72	1,017	368	B. of Attendance

Endnotes

30
Paul Delaney, "Pushouts Inquiry," New York Times, May 22, 1974. According to this article, 85.9% of students suspended in the 1972/73 school year were from minority groups, whereas the minority enrollment in the schools was 64.4%.

31
Data obtained from summaries kept by the Bureau of Pupil Accounting. For an intensive report on the 195 superintendent's suspensions which occurred in District 5, Manhattan during the school year 1967/68 (at that time Districts included high schools and special day schools) see Community Service Society of New York, Committee on Health, School Suspensions at the District Level in One Manhattan School District (New York, 1969). That Report however applied to a period pre-dating both decentralization and revisions in the statute and regulations governing suspensions. During the period Sept. 1972-May 1973, according to the Central Board data, there were no district suspenses in District 5 (which no longer includes high schools and special schools).

32
Matter of Reid, p. 4.

33
According to summaries of medical discharges maintained by the Bureau of Pupil Accounting, 4,308 children were medically discharged during 1972/73.

34
The Bureau of Pupil Accounting's summaries did not distinguish between discharges for emotional reasons and discharges for physical disability. Normally about 45% of the children receiving home instruction at any one time have been certified as emotionally handicapped (based on figures obtained from the Bureau for the Physically Handicapped for June 1971 - January 1973, which administers the Home Instruction program).

35
Based on summaries kept by the Bureau of Pupil Accounting.

36
Information and data on the home instruction program was provided by Marcus Arnold, Director of the Bureau for the Physically Handicapped, and by Dr. J. Meyer Lieman, Assistant Director of that Bureau, and by BCG personnel.

37
Home instruction is limited to those who have the mental ability to profit from home instruction. NYCRR Sec. 200.3 (e).

Endnotes

[38] According to the Commissioner's Regulations, the school district "shall maintain such records and periodic evaluations as are necessary to provide adequate assessment and appraisal of the progress made during the period of home instruction and readiness to return to a classroom program." Regulations of the Commissioner of Education, Sec. 200.3 (e).

[39] Matter of Reid, p. 4, finding No. 5. The Commissioner also found that children did not receive the required hours of instruction, finding No. 6. See also NYCRR Sec. 200.3 (e); Matter of Valentin, 10 Ed. Dept. Rep. 53 (1970).

[40] Matter of Reid, p. 5; Regulations of the Commissioner of Education, Sec. 200.3 (e).

[41] Matter of Reid, p. 4.

[42] N.Y. Educ. Law, Sec.3208 (1) & (2).

[43] In previous decisions not involving New York City, the Commissioner has held that exemption is authorized where the child is "suffering from severe mental or emotional disorder where there are no adequate facilities available for instruction of such a child," Matter of Boltja, 9 Ed. Dept. Rep. 149 (1970); or where the child's "attendance would endanger the health or safety of himself or other minors," Matter of Ranieri, 8 Ed. Dept. Rep. 179 (1969).

[44] Regulations of the Commissioner of Education, Sec. 101 et seq.

[45] Bureau of School Social Services, SED.

[46] Matter of Boltja.

Endnotes

[47] In addition to these organizational reforms, there is a need for the infusion of greater clinical and medical services, particularly in some severely underserviced areas of the city, and in particular specialties (such as pediatric neurology), and a need for effective pupil personnel workers, e.g., guidance, attendance, and BCG staff.

[48] "Plan in Response to *Reid*," Order #7.

[49] *Ibid*.

[50] *Fleischmann Report*, Appendix 9B.

[51] *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), and consent order 343 F. Supp. 279 (E.D. Pa. 1972); *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.C.D.C. 1972); *LeBanks v. Spears*, 60 F.R.D. 135 (E.D. La. 1973). Due process procedures are included in the model act prepared by the Council for Exceptional Children [Frederick J. Weintraub, Alan R. Abeson, David L. Braddock, *State Law and the Education of Handicapped Children: Issues and Recommendations*, Council for Exceptional Children (Arlington, Va., 1973), pp. 129-131] and the recent comprehensive revisions of the special education laws in several states: Conn. Gen. Stat. Sec. 10-76H; Mass. Gen. Laws Chap. 71, Sec. 3; Tenn. Code, Sec. 49-2947.

Comprehensive legislation was introduced in the 1974 session of the New York State Legislature which would have totally revised New York State law in regard to education of the handicapped, and would have provided explicit due process procedures. That Act died in Committee. It had been criticized by several advocate groups as not well thought out, and possibly abrogating those statutory rights which handicapped children do have.

[52] *Matter of Bridges*, 12 Ed. Dept. Rep. 154 (1973); *Matter of House*, 11 Ed. Dept. Rep. 215 (1972); *Matter of Manson*, 11 Ed. Dept. Rep. 48 (1971); Op. Counsel #45, 1 Ed. Dept. Rep. 744 (1951); William J. Hageny, *Handbook on Education Law* (1972 Edition) (New York School Boards Association, Albany, 1972) 7:57. However, see *Matter of Walton*, 68 Misc. 2d 935 (Sup.

Ct. Nassau, 1972) holding that it was "arbitrary and capricious" for a district to suspend a 15½ year old girl for five days and to assign her to home teaching and subsequently to a BOCES center without a full-scale hearing.

[53] N.Y. Educ. Law, Sec. 310.

[54] Wisconsin v. Constantineau, 400 U.S. 433 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970); Marlega v. Milwaukee Board of School Directors, Civ. Act. No. 70-C-8 (E.D. Wis., Sept. 17, 1970); Stewart v. Philipps, Civ. No. 70-1199-F (D. Mass. filed Sept. 14, 1970), and cases quoted in Endnote 6 above.

SUPPORTIVE SERVICES1)

The gap resulting from the unavailability of sufficient special education programs for emotionally handicapped children is compounded by a concomitant lack of auxiliary personnel within the public system's schools to provide supportive services for those emotionally handicapped children who should, with help, be able to remain within the mainstream. Moreover, as suggested in Section III, Chapter 2, the lack of such supportive personnel also contributes to the system's failure to identify emotionally and other handicapped children in need, and to the system's failure to coordinate even those services which are available.

At present there are primarily four types of auxiliary personnel serving in the public system which might provide help to the child with educationally incapacitating emotional difficulties: 1) clinicians (psychologists, social workers, and psychiatrists provided through the Bureau of Child Guidance); 2) guidance counselors; 3) attendance teachers; and 4) reading and learning disabilities specialists. Additionally, para-professional workers may be utilized to augment such services.* As described below, the present paucity of auxiliary services precludes the operation of a mainstream program on any meaningful basis.

Furthermore, the fragmentation described in relation to the overall organization of the Board of Education's services for the emotionally handicapped 2) is mirrored in the operation of the various supportive services. Each service is assigned to the school separately, often responsible to a different supervisor, with little coordination between the different personnel, and with insufficient integration with the individual school's total program.

BUREAU OF CHILD GUIDANCE

In the New York City school system, mental health service is provided through the Bureau of Child Guidance, which operates semi-independently of the Board of Education, under the joint jurisdiction of the Board and the Department of Mental Health and Mental Retardation. By funding mental health services in this manner the City receives a 50% reimbursement from the State.** The administration of BCG is decentralized into eight bureau centers which have responsibility for community school districts and high schools within a geographic area.

BCG has a total professional staff of less than 800 (including part-time staff, clinicians in training, and social work students), to provide mental health services, including diagnosis and evaluation, treatment, educational and other services for the over one million children in the city school population.* This number includes about 400 social workers, 300 psychologists and 100 psychiatrists 3) (psychistrists normally work only 15 hours a week for the school system). Not including staff in training actually assigned to the regular schools, there is a ratio of one clinician to more than 2,000 children in the elementary schools. Considerably less service, a ratio of about 1:5000, is available in the high schools. 4)

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*In addition to the enumerated services, others who work with a child on an individual or small group basis may also provide assistance to a child with special needs. For example, specialists assigned to work with non-English speaking children and families may provide help with other than language problems. In the high schools, deans, cutting and drug coordinators, and grade advisors may follow through with individual problems. However, the ratio of such service to the number of students requiring help is as insufficient as are the more traditional pupil personnel services.

But see footnote p. 76.

As this staffing operates in practice, clinicians rarely function full time in a school, and normally are in a school one or two days a week. The BCG staff are only in a school on an intermittent basis, and are responsible to BCG supervisors rather than to the principal of the school.

In the community school districts, the districts themselves and the district BCG centers determine how the clinicians function within that district.** In some districts, services are divided equally among the schools; in others, service is concentrated in the neediest schools, with service provided to other schools on an emergency basis. The service provided is so sparse that the clinical staff is often unknown to the teachers. The clinician is equally unfamiliar with the faculty and may have difficulty evaluating whether a problem lies with the child or the teacher. Most important, the clinician will typically be called in only when the school and family is at the point of exasperation and have given up on each other. There is little opportunity to intervene early and to plan on a constructive basis.

In the high schools the situation is even more inadequate.*** One high school visited, John Jay High School, serving largely a poverty population, has about 5,300 students enrolled, 52% of whom are severely retarded in reading. John Jay has an aggravated truancy problem (an average daily attendance of 64%) 5) yet is serviced by only one social worker and one psychologist, who are in the school two days a week each.

Not only is BCG clinical service statistically inadequate, but it has remained more or less static even in the face of the recent expansion of special education programs and services which clearly require clinical support services (such as classes for the emotionally handicapped and classes for the brain-injured). The failure to expand services is in part a result of a continuing

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*BCG has an annual budget of about $15,000,000.

**About 75% of the BCG field staff (357 clinicians) is assigned to the community school districts. Allocations to the respective districts are made on a formula based on school population and reading levels. The size of district teams ranges from 8 to 19. About 11 1/2% of the field staff (approximately 60 clinicians) is allocated to the high schools. At present, negotiations are being conducted between DMH, BCG, and the Board of Education on modifying the allocation formula. The Board of Education and DMH have recently signed a Letter of Agreement, which the authors were informed would regularize the consultive process between the agencies. DMH also informed us that BCG was relicensed as a Mental Hygiene Clinic, in May of this year (1974), which we were informed will make possible greater funding from the State.

***See previous footnote

struggle between the Board and the Department of Mental Health and Mental Retardation (DMH),* and the reluctance of DMH to expand funding in the direction which the Board shapes. In part, the very meagerness of BCG services, and consequent lack of visible impact of the services, also contribute to the fact that there is not much public confidence in BCG and there has been little public outcry at the failure to expand clinical services, and no organized joint agency-citizen efforts to obtain expanded governmental funding for school mental health services.**

GUIDANCE SERVICE

Guidance counselors, if available in sufficient numbers and if properly trained, should be another source of supportive help for those emotionally disturbed children who are able to remain within the regular school setting. By providing such services as individual counseling, counseling of the student's family, group counseling, and coordinating available school and community resources, counselors could also maintain students who might otherwise need segregated special education services. In particular, counselors might provide carry-over support for students in the transition from special education programs to regular school settings. They should also be able to provide specialized vocational counseling for children with special needs.

However, there are only approximately 1,600 guidance counselors presently functioning in the City's public schools 6) (including counselors assigned to special intensive pilot programs). These counselors have numerous functions besides guiding children with special needs (such as high school and college placement responsibilities). There is a counselor-pupil ratio in the elementary schools of 1:1000, in the intermediate schools of 1:600, and in the high schools of 1:750.7) According to a recent report,8) the actual average ratio at the secondary school level of counselors to pupils not involved in special programs is 1:1200. The same report points out that the average ratio in other large city school systems is between 1:350 and 1:450, and that in those localities where guidance ratios are mandated, mandates range from 1:300 to 1:600. (There is no mandate in New York City or State.) 9) A ratio recommended by professional associations is 1:250.10)

Guidance service in the elementary and middle schools is now a decentralized function* and such services are not mandated. Some of the districts, since decentralization, have substantially decreased guidance service. Between 1970/71 and 1971/72 guidance service in the elementary schools declined by 12%.11) In part, this is because auxiliary services are one of the few areas of discretion and flexibility for the districts, since most of the community school budget is taken up with contract and other mandated expenses.

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*Among the issues causing conflict between the Board of Education and DMH are the following: 1) DMH is oriented towards decentralized services, with the communities setting priorities, while the Board sees special education as a centralized function; 2) DMH desires a consultative role in program planning and feels that the Board should not simply attach clinical services to programs; 3) the Board's primary interest is in school programs while DMH is under pressure to service many other program areas; 4) DMH desires to set some system of accountability; and 5) the cost of school services is high since BCG operates on the Board of Education schedule (school hours, long vacations) although the salaries are at least comparable to those of clinicians in other agencies.

**In September 1974 after completion of the herein report, BCG was allocated between 3 and 4 million of supplemental Board of Education funds, which funds are not through DMH. BCG is now in the process of hiring between 75 and 100 added social workers, and added psychologists, however, at this late date there are problems in securing qualified personnel. It is not known how this new personnel will be allocated.

Similarly, superintendents of the high school districts (high school districts are organized on a borough-wide basis) determine how much of a high school budget will be devoted to guidance service. For example, in John Jay High School there are only two guidance counselors serving the population of some 5300; one of the guidance counselors acts exclusively as a college advisor, the other spends much of his time on new admissions. The willingness of the community districts and the High School Division to cut down on guidance service reflects, in part, a lack of confidence in the effectiveness of such service. The present ineffectiveness of many counselors is caused partially by the fact that they are overwhelmed with responsibilities (often of a routine nature), and also by the fact that many have not extended themselves to take on an aggressive role in behalf of the student.12)

ATTENDANCE TEACHERS

Attendance teachers should be a vehicle of appropriate service for those children whose emotional and learning difficulties are manifested in school phobia, truancy, prolonged absence, or total non-enrollment in school. Attendance teachers are supposed to combine two functions: 1) that of enforcing the compulsory school law,13) and 2) that of a visiting social worker. The attendance teacher can: 1) evaluate truants for learning, physical and emotional difficulties, 2) help the school understand the stresses which the child is subject to outside the school, and 3) help parents (particularly those unwilling or unable to come to school) to understand what programs are available at the school and how their child might be helped.14)

However, attendance service is currently totally inadequate to the need, as evidenced by the high proportion of truancy in the city. A representative of the Bureau of Attendance informed the authors that the Bureau felt that some 20,000 high school and 10,000 elementary and middle school truants were "written off" by the school system each year.15) According to the Bureau of Attendance there are about 100 attendance teachers serving the city public high school population of about 300,000.16) The average daily attendance in the city high schools is approximately 74%.17) There is thus an overall attendance teacher to pupil ratio of 1:3000 in the high schools, although the Bureau of Attendance has recommended a ratio of 1:800 in the academic high schools and 1:1000 in the vocational high schools.18) John Jay High School, for example, with an enrolled population of 5300 and an average daily attendance of some 62%19, 20) had only one attendance teacher in 1972/73.

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*The Bureau of Educational and Vocational Guidance, as a centralized office, operates primarily in a consultive role, such as preparing curriculum bulletins, providing "articulation" from one school level or district to another.

Attendance service has been partially decentralized, although a centralized Bureau of Attendance is mandated by State statute,21) and attendance teachers are essentially under the supervision of that bureau, rather than the local community districts or schools. The size of the attendance staff in a district has up until now been determined by the district itself. In a recent case22) brought by those Bureau of Attendance personnel whose jobs had been eliminated, the court held that a community school district was in violation of the state compulsory school laws when it dismissed all its attendance teachers; however, the court stated that the questions on the degree of service which might be required should be brought initially before the City Board of Education rather than the court. The Bureau of Attendance was unable to provide any data on the number of attendance teachers available in the elementary and junior high schools. Some community school districts have drastically cut attendance service, giving a range of expressed reasons from dissatisfaction with the quality of service, to a desire to provide first for students who want to come to school.

As an illustration of the degree of service currently provided in the lower schools, even in a community district which sees the need for attendance service and where the district attendance personnel are well regarded, District 30 (in Queens) has only seven attendance teachers, serving a community school population of some 23,000.23) Thus, even in this district the attendance teacher to student ratio is 1 to over 3,000 (although the Bureau of Attendance recommends a ratio of 1:1500 in the elementary schools, 1:1000 in the middle schools and 1:800 in special service elementary and middle schools).24)

READING AND LEARNING DISABILITIES SPECIALISTS

Unlike the auxiliary services described above, reading and learning disabilities specialists are a totally decentralized function, which are provided either through the district or the school itself. It was beyond the scope of this report to survey the extent of such service currently available. Some districts do have pilot programs for children with learning disabilities,25) and in addition, most schools do have remedial reading and tutorial programs of some kind. But such programs are inadequate to cope with the degree of reading retardation in New York City.26) The budget which the Board of Education is currently proposing to the city (for 1974/75) contains a request for an experimental centralized learning disabilities program including a specialist teacher in one school in each school district (with back-up clinical and other supportive services). The program is designed to identify, diagnose, prescribe for, and serve learning handicapped children.

RECOMMENDATIONS

1) Apart from the quantitative insufficiency of auxiliary services, there should be an effort to organize such services existing within the school system in an integrated manner to make it a recommendation and not a negative statement.

2) Within each school there should be a coordinated approach to pupil personnel services; the various services should be accountable to the principal of that school, rather than to an outside bureau.

a) In the high schools and intermediate schools pupil personnel could appropriately be organized into one department under a chairperson or director. Intra-departmental communication and conferences would provide an avenue for early identification and there would be an integrated approach for a student with special needs. There would be a further advantage that students would go to the department for so many differing services that there would be no peer identification of the student going for counseling or mental health services.*

b) In the elementary schools such services could be the responsibility of an assistant principal. There should be an emphasis on out-reach to the classroom teacher and follow-up on early identification.

3) Adequate supportive services should be available within the schools, with the purpose of maintaining emotionally handicapped and other handicapped children within the normal school program. Similar intensive guidance programs, such as the College Bound Program providing supportive service for disadvantaged students with high potential, have been successful.

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*The departmental organization of pupil personnel services is used by some of the suburban school districts.

Endnotes

1)This section is based on interviews with and information provided by Dr. Dorothy Berezin, Director of Office of Children's Services; Ellis Christon, Social Worker, Office of Children's Services; Marvin Greenstein, Assistant Director of the Bureau of Child Guidance (BCG); directors of two BCG field offices and two social workers; Clara Blackman, Assistant Director of The Bureau of Educational and Vocational Guidance (BEVG); guidance supervisors of three community school districts; three elementary school guidance counselors, one junior high school guidance counselor, three high school guidance counselors; Margarite Johnston, Director of Programming and Planning, Bureau of Attendance; Administrator of the Bureau of Attendance in one community school district. For a recent report on guidance service in the New York City high schools see Agenda for Action, A Report of the Guidance Advisory Council to the Board of Education of the City of New York, Bureau of Educational and Vocational Guidance: July 31, 1972.

2)See Sec. III, Chap. 1.

3)Data on staff size is derived from "Bureau of Child Guidance Statistical Report," Table I, BCG Number of Payroll, April 1971. No later data was available but we were informed that the size of BCG has not increased.

4)A BCG psychologist, in the United Federation of Teachers' newspaper, reports that the New York City system has one licensed psychologist for every 10,000 children, and one Master of Social Work for every 8,000 children. He blames the situation on the withholding of funds by DMH (Sheldon Salinsky, The New York Teacher, May 6, 1973, p. 27).

5)High School Profiles 1971/72, Board of Education of the City of New York, Office of Planning-Programming-Budgeting, p. 74.

6)Data provided by BEVG as of 1971/72. In that year, BEVG reports that there were approximately 630 counselors serving the elementary schools (pop. 611,395), approximately 380 counselors serving the middle schools (pop. 229,510), and approximately 390 counselors serving the high schools (pop. 296,657). Pupil population figures derived from "Annual Census of School Population" Summary Tables, October 29, 1971, p. 4.

7) Ibid.

8) Agenda for Action, p. 25.

Endnotes

[9] Ibid., p. 51.

[10] Ibid., p. 25.

[11] Data provided by BEVG.

[12] High School Profiles (pp. 202,203) reports a city-wide average ratio of pupils to guidance service positions of 222:1. However, this figure includes teachers acting as grade advisors. BEVG does not consider the advisors qualified as counselors, and they are not trained in such areas as group therapy. The High School Profiles ratio also includes counselors in special programs.

[13] N.Y. Educ. Law, Secs: 2570; 3205(1)(a); 3210-3213.

[14] As previously suggested, in Sec. II, Chap. 1, the attendance teacher is also a primary agent for the identification of handicapped children. The Bureau of Attendance also fills other substantial functions such as pupil accounting.

[15] Margarite Johnston, Director of Programming and Planning, Bureau of Attendance.

[16] Data provided by Bureau of Attendance as of January, 1972.

[17] Bureau of Attendance, "Annual Report on Pupil Attendance, 1972/73"; city-wide average daily attendance for that period was 83.41%. For 1971/72 the figures were: high school attendance 73.07%; city-wide average attendance 83.29%.

[18] "The Attendance Teacher in the School," Bureau of Attendance. Program #56-69-70, revised 6/13/69 (mimeo).

[19] Bureau of Attendance, "Annual Report on Pupil Attendance 1971/72."

[20] Some poverty level high schools have less than 50% average daily attendance. See Sec. IV, Chap. 5.

Endnotes

21) N.Y. Educ. Law Sec. 2570

22) Matter of Geduldig, N.Y.L.J. 1/16/74 (App. Div. 2d).

23) Those personnel are also responsible for the 19,000 children attending private shcools in the district. District 30 has a high attendance record with an average daily attendance percentage of almost 90%. "Report on Pupil Attendance, 1972/73."

24) See endnote 18.

25) See Sec. III, Chap. 5.

26) 68% of the students in the New York City public school system are below grade level in reading. "Pupil Reading Achievement in New York City," Board of Education of the City of New York, January 1974.

SECTION IV

PUBLIC SECTOR - BOARD OF EDUCATION PROGRAMS

THE CHILDREN

Benjamin

Benjamin is a nine year old white child who lives with his parents and seven brothers and sisters in Queens. His father is unemployed and the family lives on veterans' assistance.

Benjamin has had severe school problems since the first grade. In second grade, he was placed on a half-day truncated schedule. After several months he was placed in an interim program in another school to help him adjust to getting back to the regular class. After he made some progress in the interim program, he was placed back in a regular program in another school. There, his behavior deteriorated immediately. This year (fourth grade) Benjamin was placed in a Junior Guidance Program which had just opened in still another school. There, after a year, the teacher reports that he still has not learned to read and that she has difficulty in restraining his behavior.

Harold

Harold is a Black adolescent (15 years old) who has lived with a guardian, Anna Jones, since he was three years old. At that age, his mother, who had previously neglected him, deserted him altogether. Mrs. Jones, a former practical nurse, has severe arthritis and supports Harold and herself on disability payments.

Harold did not present particular behavior problems in elementary school, but, his academic work was poor and he was placed in a "low" class. In junior high school, his poor reading ability became frustrating, and at the same time, his mother reappeared and tried to regain custody of Harold. This combination of problems disturbed him greatly. Harold began to cut classes, to truant and to get into violent arguments with teachers and other students. Finally, he was placed in a special class run by the school, and was able to graduate from junior high school.

Harold then entered the regular local high school which has a population of over 4,000. He was not provided with any transitional service or any special program. Almost immediately Harold began to truant. When he got into an argument and threatened to hit a security guard, he was suspended from school. Mrs. Jones asked an advocate to attend the suspension hearing with her. The advocate persuaded the school personnel that Harold needed special assistance. Harold was placed in a Special High School Program in Queens. (This program currently serves only 16 children citywide.) His guardian reports that he has made a good adjustment to the program and is beginning to make some academic progress.

SPECIAL CLASSES

CLASSES FOR THE EMOTIONALLY HANDICAPPED

Theoretically the core of the public sector day school program for emotionally handicapped children is its program of classes, which is comprised of centers of two or more small classes, normally located within the regular public schools. That total class program presently serves some 1,900 students and consists of: 1) classes for the moderately emotionally disturbed (formerly known as B Centers or Junior Guidance Classes); 2) classes for severely emotionally disturbed children (formerly known as A Centers); 3) Resource Rooms, generally serving moderately disturbed students who do not require all-day special class placement; 4) transitional classes for children coming from institutional placement; and 5) various other programs run as demonstration projects. These programs of classes, at least in their present form, were all established in the last several years by the Office of Special Education and Pupil Personnel Services (OSEPPS) and were developed and administered independently of the Special Day School Program for Socially Maladjusted and Emotionally Disturbed Children, which in actuality currently serves a greater number of students (some 2,500)1) and has been in operation for almost thirty years. The current plans, formulated by the Board of Education for the expansion of services to meet the needs of the emotionally handicapped, project augmenting the special class program substantially (by up to 4,000 children for 1974/75), particularly the classes for moderately disturbed children (by as many as 3,000 children for 1974/75).2)

CLASSES FOR MODERATELY EMOTIONALLY HANDICAPPED CHILDREN3) (B Centers, Junior Guidance)

The direction in which the Division of Special Education is moving indicates that the program for moderately disturbed children will be the major public program for emotionally handicapped children in the city. That program, as it is presently organized, was re-instituted by the Board of Education in 1971 under an order issued by the State Commissioner of Education in his judicial role in a class action appeal (Matter of Nazario).4) Prior to 1969 the Board of Education had run Junior Guidance classes, which were largely disbanded by the community school districts subsequent to decentralization.* The Nazario order resulted from an appeal brought on behalf of a child formerly enrolled in such a class. The Commissioner

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* Prior to decentralization the centrally administered Junior Guidance Program had served approximately 3,500 children. It was developed in the 1950s to provide a program for suspended and disruptive children too young to attend the "600" schools (the present Special Day Schools). These classes were theoretically to be carefully balanced both in terms of disorder (including acting-out and withdrawn children) and of sex, in a contained small class unit, and working with an inter-disciplinary team including

(Cont'd next page --

ordered the City Board to provide suitable educational facilities for all children found to be emotionally handicapped who were previously in the program. Thus the classes were set up from the start under conditions of pressure. Their organization was hampered by continuing difficulties including: 1) the failure of the Board to budget sufficient personnel and services; 2) problems in coordinating with the decentralized school districts and schools to obtain physical facilities; 3) the necessity to hire qualified personnel under hurried circumstances, along with the need to comply with contractual and other obligations designed to protect prospective applicants for positions. The pressures have continued under the far-reaching Reid order.

Population Served and Criteria for Placement

The program for the moderately handicapped currently serves some 1050 pupils; about 950 at the elementary level, and over 100 at the junior high school level. + As described in recent Board of Education literature, "(t)hese classes are planned to serve children who have been clinically diagnosed as having a moderate degree of emotional handicap, which prevents them from functioning to their potential in regular classes of the public school."5) Placement requirements include: 1) a primary diagnosis of moderate emotional handicap; 2) the absence of major neurological deficit; 3) the ability to profit from group experiences without damage to self or others; and 4) at least average intellectual capacity.6) The clinical evaluation and recommendation must be made by a psychiatrist and a social history is required (normally this is through BCG, although BCG may use evaluations done by outside agencies or clinicians). Obtaining the evaluation has not typically posed difficulties.

The policy of the administrators of the classes is to require parental consent for placement; however, as has been pointed out repeatedly in this report, the meaningful quality of that consent must be seen in light of

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+ As provided by the Division of Special Education, as of April 24, 1974. Due to constant expansion of the number of children served, this data may not reflect the recent increases.

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* -- Cont'd from preceding page)

teachers, guidance counselors and clinicians (although the auxiliary services were never provided in full). Because of the pressure to place acting-out boys, some smaller classes were set up just for such placements. Not all of the children in the classes had been evaluated prior to placement, or certified as emotionally handicapped.

the limited alternatives open to the parent. There is an attempt to have classes which are balanced in terms of sex and type of disturbance (to include acting-out and withdrawn children). Most referrals, however, are for placement for acting-out and disruptive boys. There have been some complaints that clinicians merely rubber-stamp referrals by school personnel and that the programs are "dumping grounds" for poor and minority children who have caused school problems, whatever the reason for their behavior.* As the classes increase, there would be a greater danger of such improper placements.

As originally designed, it was planned that there would be a distinction between the A and B Center programs in that the former would serve the more severely disturbed, psychotic, non-reality oriented children in smaller classes more heavily serviced; whereas the B Centers would serve the moderately disturbed child and would require a less intensive program. However, it has been found that many of the B Center children who have severe behavior problems may require an equally intense program. Recently it has been decided that the program distinction will be discontinued and children will simply be placed according to their need. Realistically, it seems that in view of the scarcity of either kind of placement, to some degree children have been and will continue to be placed in that program which is open and available.

Although the Board of Education does not maintain discrete figures on the ethnic makeup of the pupil population of the classes for the moderately disturbed, it is generally acknowledged that the classes currently serve mostly poor Black and Hispanic children, many of whom come from disorganized and overwhelmed families.** A racial census taken by the Office of Special Education in the school year 1972/73 indicated that 85% of the pupil population of all classes for the emotionally handicapped were Black and Hispanic+ (as compared to 63% of the overall school population in that year).7)

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*Reported by field personnel interviewed in December, 1973; the Mental Health Law Project of the American Civil Liberties Union also reported receiving some complaints of improper placement.

** All field personnel interviewed reported that the classes served primarily poor, disadvantaged, minority children.

+ Data provided by the Board of Education, Division of Special Education and Pupil Personnel Services for the 1972/73 school year (date unrecorded). (A Board of Education census as of October 31, 1972 showed that of 1,829 pupils participating in "Junior Guidance" programs, 77.7% were Black or Hispanic.) However, since there were not 1,800 children participating in all special classes for the emotionally handicapped at that time, it is not clear to what class the "Junior Guidance" category refers. Despite many requests, we were unable to obtain more recent ethnic data, nor any data on specific programs.

Standardized reading tests are not given to the pupils, on the ground that they are emotionally handicapped. However, it was estimated by field personnel that almost all the pupils function below grade level in reading, as well as in the other academic areas, and that 75% are well below grade level.

The centers normally serve children within the community school district; in some cases most, if not all, come from the home school itself. In some instances, as the centrally operated program has expanded, it has simply taken over programs previously run by schools or districts.* Door-to-door transportation is provided for younger children who have to travel. In many cases waiting for transportation facilities takes up to two months, unnecessarily disrupting the child's education.

Program and Organization

The centers normally consist of units of two classes served by three teachers and one para-professional. The third teacher covers contract mandated teacher-preparation periods,8) crisis-intervention, and may fill some special functions which vary from center to center. A special teaching license is not required, and at present the Board of Education has not created any such license category.**

The program was designed to have classes of 10 to 12. However, it was discovered that this was unworkable because of the severe behavior problems of many of the children. The average class size is now apparently about 8. 9) Although the program is designated as a program for the emotionally handicapped, it is not provided with any mental health clinical services. For the year 1973/74 the Division of Special Education had requested one clinical team per borough to provide consultant service for the centers for the moderately handicapped (by contrast, the program for the severely disturbed, as designed, has the services of a team on a one-half day a week basis). However, even this minimal request was not fulfilled, apparently because of the continuing stalemate among the Division of Special Education, BCG, and the Department of Mental Health and Mental Retardation (DMH).10)+ The Administrator of the special classes for the emotionally handicapped has said that "(t)he lack of clinical staff . . . is especially distressing. Their [the children's] needs are extensive and very complicated. In addition, their management in classrooms and other situations is extremely difficult. For example, some of our children commit or threaten suicidal attempts. These manifestations may represent a manipulative or a serious attempt at self-destruction. The reactive anxiety levels of the teachers when such crises occur, are directly attributal to the lack of immediate and long-term clinical consultation for such children and for themselves."11)

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* For example, P.S. 122Q, and classes serving 110 children in District 15, Brooklyn.

** Beginning February 1975 the State will require special certification for new teachers of special education (Regulations of Commissioner of Education, Sec. 80.6).

+BCG has recently (Sept. 1974) received an added supplentary allocation and is attempting to hire added clinical personnel some of whom may be used to service B Centers, however, there are problems in hiring qualified personnel at this late date.

Even one clinical team per borough would be totally inadequate to provide a therapeutic program, particularly for the poor and often disorganized families with multiple problems, whose children predominate in the centers. To depend on outside resources, such as clinics and agencies, may result in fragmented care, and is particularly difficult when families are too overwhelmed or are unwilling to take the child to the agency on a dependable basis.

The centers are served by curriculum coordinators who are experienced in special education. The intention was that this would be on a once-a-week basis, but there are not sufficient coordinators for that degree of service. Guidance counselors are provided for both the centers for the severely disturbed and the moderately disturbed in a ratio of one counselor for 100 children (each counselor covering five schools). No figures were available on the per-pupil cost of the program.

The centers vary considerably from school to school, depending on the particular personnel involved and their training and qualifications, as well as the atmosphere of the school itself. However, certain generalizations can be made.

Although the program is ostensibly for moderately emotionally handicapped children of normal intelligence, the program does not have defined learning goals; illustratively, the pupils are not given standardized reading tests. In the classes observed, group instruction predominated. There appeared to be little opportunity to focus on the particular learning needs of the individual child. At best the classes had achieved behavior control during the time the child was in school. In a situation where acting-out behavior predominates and there is a paucity of needed services, this may be all that is possible.

Although an in-school special class placement is theoretically less isolating than placement in a special school, in terms of the actual functioning of these classes, that assumption becomes questionable. The program design of the classes is to keep pupils in a contained situation and out of provocative school situations. The pupils have lunch in their classrooms with their teachers and are kept out of the general hubbub of the schools. There is, therefore, only limited benefit from the fact that the classes are in the regular school. On the other hand, there is a constant stigma by peers because the pupils are known to be in a special class. In some schools the stigmatization is intensified by the fact that the classes are predominantly composed of minority children. It may in fact be less of a burden for a child who cannot participate within the regular school situation in any case, to be in his own school where he does not feel constantly that he is being labeled by others.12)

In the authors' view, under present circumstances (particularly because of the absence of clinical services) it is questionable whether this program qualifies as a suitable educational facility appropriate to the needs of those children. No figures were available on the per capita cost of this program.

CLASSES FOR THE SEVERELY EMOTIONALLY HANDICAPPED 13) (A Centers)

The original priority of the former Office of Special Education, prior to the Nazario Order setting up classes for the emotionally disturbed, was to provide programs for severely disturbed children. It was considered that this was the most immediate need since the public school system had no day school programs at all for such children, and children who could not get into private schools were excluded from school altogether.

During the years 1972/73 and 1973/74, centers for the severely emotionally handicapped (then called A Centers) were established, and as of the spring of 1974 some 475 children were enrolled in such centers * (all at elementary and junior high school level).

Particular difficulties were encountered in obtaining space in the decentralized districts for these programs, since the classes do not serve children from the school exclusively or even the district involved. Principals felt that difficult children would be brought into their schools, in programs not under their control, with teachers not selected by them, and with the school often lacking necessary services. In fact, although it is considered part of the therapeutic design for the classes to be in regular schools, some are located in hospitals. As with other programs for handicapped children, door-to-door transportation is provided where needed.

The criteria for placement in the A Centers was identical to that for the centers for the moderately emotionally handicapped, except for a requirement that there be a diagnosis of severe emotional handicap.14) As described in Board of Education literature, the children are characterized by "thinking disorders, bizarre behavior, severe emotional crises."15) Lately the distinction between the two types of centers has been minimized, with the children placed according to need. At least originally, the actual evaluation was a more exhaustive procedure than was involved for the "B" program. The child would be seen by clinicians attached to the A Center and in some cases be kept in the class for several days to determine whether the placement was appropriate. All field personnel agreed that there are long waiting lists for such placements, and that there was the usual difficulty of pressure to place acting-out boys. Although there are no figures available as to ethnic or sex make-up of the program, it was evident from observation that boys predominated.

The A Center model parallels the center for the moderately disturbed, except that classes are smaller (six to eight in a class),16) and there is a para-professional in each class. By design, each A Center was to be serviced by a clinical team (a social worker and a psychologist and a consulting psychiatrist) on a half-time basis, with the clinical team providing a prescriptive diagnosis and then working with the teachers on a

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* Due to constant expansion of the number of children served, this data may not reflect the recent increases. Figures are as of April 24, 1974.

continuing basis, and in some cases also working with the parents (it was not anticipated that the clinicians would work directly with the children). However, because of the dispute with the Department of Mental Health, many A Center classes have in fact not received these services.*

The A Center program (although only embryonic when viewed by the authors in the 1972/73 school year) appeared to be a favorable situation, with the exception of the continuing lack of mental health services, since there was a relatively high degree of other service. In many cases the children had previously been out of school altogether, and the parents and personnel involved were impressed that the children could be maintained in a school situation at all. There were no figures available as to the per capita cost of the program.

RESOURCE ROOMS17)

The Resource Room program for emotionally handicapped children is designed "to serve children who cannot function productively in their regular classes for a continuous school day."18) Students attend the program for specified periods during the day, with the aim of giving them some relief from the regimentation and demands of the regular school day and to provide needed remediation. Admissions to the program are on the basis of recommendations by the school administrators, guidance counselor, or BCG clinician. The Resource Room is administered by one teacher and one para-professional.

The authors visited a junior high school that had a program which had only been in operation for a short time. The school had a population of 1,800. The program was available for 14 sixth-grade pupils, who attended in groups of five or six for periods of an hour to an hour-and-a-half daily. The room contained a variety of media materials, such as reading machines, typewriters and calculators, as well as teacher-prepared individualized materials. At the junior high school level the program had the asset of not stigmatizing the pupils, a particular liability at the adolescent age level. Clearly an important ingredient in the success of the program would be the ability of the teacher to follow through with the student in his total school experience.

As of the spring of 1974 there were a total of 114 pupils enrolled in Resource Rooms, 84 at the elementary level and 30 at the junior high school level.** There are no figures available of the per capita cost of this program.

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*During 1972/73, clinical positions in Brooklyn were not filled for most of the school year; during 1973/74, newly opened classes received no services. BCG as of September 1974, was attempting to hire new clinical personnel through a supplemental allocation which will service these A Centers.

**As provided by the Division of Special Education, as of April 24, 1974. Due to constant expansion of children served, this data may not reflect the recent increase.

HIGH SCHOOL PROGRAMS FOR THE EMOTIONALLY HANDICAPPED

These programs are described in Sec. IV, Chap. 5.

ALTERNATE CLASS PROGRAMS FOR EMOTIONALLY HANDICAPPED CHILDREN

Transitional Class Program19)

The Division of Special Education and Pupil Personnel Services serves relatively small numbers of emotionally disturbed children by several alternative programs, including the Transitional Class Program. That program consists of classes designed for children coming out of State Hospitals. The program was given impetus by the movement to release children from long-term institutional placement and bring them into the community, and the need to provide these children with an interim educational program. The Transitional Class Program serves about 80 children in six transitionaal class centers.*

Begun in 1972, the program was planned and implemented through the joint cooperation of the Central Board of Education, the Department of Mental Health and Mental Retardation, the New York State Department of Mental Hygiene, and the Citizens Committee for Children. The design was to provide a short-term program for children who had been confined to institutions which would bridge the gap academically and would permit the children to acquire appropriate school behavior prior to entry or re-entry into the regular school system. The ostensible distinction between the Transitional Class centers and the centers for the severely emotionally handicapped is that the former are intended as interim programs and the latter as a long-term program.

A second objective of the program was to overcome the fragmentation between the agencies devoted to the treatment and education of these children in an integrated therapeutic program. Teaching personnel are provided by the Board of Education and clinical personnel by the State Hospitals.** Preferential placement in the respective programs is given to the child discharged from the State Hospital associated with that Transitional Class center, although other children are placed in the centers. The clinical team is available a minimum of one-half day a week. The educational component is similar to that at the A Centers. There are six to eight children in a class,20) and classes are placed whenever possible in regular school settings in units of two to three classes, with one extra teacher and a para-professional in each class. The program also provides three attendance teachers to service all the children in the program.*

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* As of April 24, 1974.

** In some cases clinical services from the city hospitals may now be used.

The program serves children in the age range of 9 to 14. The greatest need for service is at the adolescent level [in February of this year (1974) a center for adolescents was to be started at one high school; the other centers are in elementary schools]. The population is about 60% boys, and according to administrative personnel, ethnically reflects the area served. Most of the children are characterized by severe acting-out behavior (including severely depressed, suicidal children). The children coming from institutions are primarily poor, because middle-class families usually manage to avoid this kind of placement. Children are screened by the clinical team working with the center prior to placement.

The program operation has not precisely followed its original design. It has been found that the children are not able to return to school within the intended short period, because of extensive academic retardation. The theoretical distinction between this program and the A and B Centers is not entirely realistic, and, in fact, some children in the Transitional Class Program do not come from institutions (the home district is given one-fourth of the places in the classes to be used for their own severely disturbed children). In the program visited, the ideal of close interaction with the team from the referring State Hospital had not been realized. The teacher in charge indicated, however, that at the other centers there might be a closer relationship with the hospital. This relationship is seemingly dependent on unique factors, such as the initiative of the particular hospital and teaching personnel involved.

The transitional class center visited had an experienced, trained learning-disabilities expert as the teacher in charge. The program was academically oriented, and used behavior modification techniques.**

The elements of this Transitional Class Program were appropriate for other emotionally disturbed children, whether or not previously institionalized. The teacher in charge attributed its success to several factors: the favorable pupil-personnel ratio; the services of attendance teachers who are available for out-of-school problems and for placement assistance when the child is discharged from the program; and the ample budget that is provided for the special materials required to ameliorate the students' academic retardation.

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* The Bureau of Attendance, which now has the responsibility to follow up on children discharged from institutions, participated in the committee which designed the transitional program.

** The authors had a favorable reaction to the program visited. This may have been because of the experience and qualifications of the particular personnel at the center. The teacher in charge is now working as a teacher-trainer for the whole program.

Administrative personnel estimated that during the school year 1973/74 the per-pupil instruction cost of the program was $2,500 (not including clinical costs). However, the program, currently financed through federal funding (Title I ESEA, Aid to the Disadvantaged), was budgeted at $448,000 for 1973/74,21) with about 100 children currently served (reflecting start-up and high initial administrative costs which should diminish with expansion).

The program had not been in effect for a substantial enough time when interviews were conducted to assess long-term success. It was reported that some children had to be returned to institutions (of course this does not mean that they do not benefit by being in a good educational program during the period that they are able to remain in the community).

Pre-Placement Classes and Classes for the Emotionally Handicapped - Brain-injured (formerly a part of Transitional Classes)22)

The pre-placement classes consist of a series of centers located in regular schools which were originated and are administered by the Board's diagnostic Evaluation and Placement Units (E&P).23) E&P established this program in 1972 to provide some service for children that it had found could not be placed within the system of categorized programs, such as a child who is both neurologically impaired and emotionally handicapped (or otherwise doubly handicapped), or a child who has a hearing problem but whose hearing loss is not severe enough to require or make appropriate placement in a program for deaf children. E&P had found that there were significant numbers of children who could not be placed for such reasons, for many of whom the only alternative was home instruction or institutionalization. For some of the children, the program aims at overcoming one of the handicapping conditions (such as difficult behavior) to an extent that he can then be placed in one of the Board's other special classes. For other children, such as the mildly hearing impaired, the effort has been to set up appropriate supportive programs in the regular system. Another objective in setting up the pre-placement program was to demonstrate that programs could function well other than on a narrow categorical basis.

There are some 250 children currently served in the pre-placement classes (223 at the elementary level and 21 at the junior high school level).24) In the school year 1972/73, an ethnic census of the then 97 children in the program showed that 70% (68) were Black or Hispanic.

As part of the pre-placement program, E&P has developed classes specifically to serve children who are both brain-injured and emotionally handicapped (BI-EH classes). It currently administers such classes for about 50 children. E&P anticipates that these classes will be taken over by the new Bureau of Neurologically Impaired, and will be expanded from a pilot program.

The pre-placement units are administered on the model of three classes to a unit, with six to eight children in a class (more at the junior high school level) served by four teachers, with a para-professional in each class. The centers are affiliated with E&P units and some limited clinical and other special services are provided through E&P. One BI-EH class in the Bronx gets clinical back-up services from Bronx Children's Hospital. At the pre-placement center observed by the authors, one of the few teachers was a specialist in speech therapy. The methodology of that program was systematic behavior modification. No cost estimate was available for this program.

PILOT PROGRAMS[25)]

The Teacher-Moms Program[26)]

Teacher-Moms is an experimental program for severely disturbed children, located at P.S. 89 in District 11 in the Bronx. It was originally initiated by mothers of disturbed children. The program serves approximately 40 children (between the ages of 5 and 12) who attend on a four day a week basis.

Teacher-Moms makes extensive use of para-professionals. The design of the program is that the children initially work with a para-professional on a one-to-one basis, under the direction of a teacher. The child gradually progresses to a two-to-one situation, and finally to an open classroom. (The original para-professionals were mothers.) The program has two licensed teachers and 25 para-professionals. It is affiliated with Jacobi Hospital, which provides clinical support services (a social worker and psychologist on a consultant basis to work with the teachers; the social worker also participates in monthly parent meetings).

Although no per capita cost estimate is available, it was suggested that the program is less expensive than most other special education programs for the emotionally handicapped children because of the use of para-professionals. The Division of Special Education plans to open a second Teacher-Moms center in Queens.

Program for Autistic Children at Bronx State[27)]

This program, which is located in Bronx State Hospital, originated when, at the behest of the parents of the children involved, the Division of Special Education took over a private school program for autistic children which had been closed by the state for violating certain regulations. As described in Board of Education descriptive material, the program, which serves 15 severely handicapped children (age 5 to 9), is using an operant conditioning approach to develop speech, social living behavior, and academic skills. The program is under the direction of a BCG psychologist, who also works directly with the children. The program is financed through federal funds for handicapped children (Title VI ESEA, Amendments of 1969) and was budgeted for the year 1972/73 at $48,000.28)

Children and the Law29)

During the year 1973/74 , at the initiation of the Department of Mental Health (DMH), the Division of Special Education cooperated in setting up several projects along the treatment model to provide services for the hard-core of children, often court-involved, who are systematically rejected from other programs. The project consists of both residential and day-treatment programs. Under the day-treatment aspect of the project, a city hospital provides clinical services and the Division of Special Education provides instructional services. Insofar as could be determined, one day-treatment program had opened in Kings County Hospital; out-patients at the hospital were seen on a remedial basis two days a week. The program opened with 16 children; however, there were plans to expand to 45 children by September 1974, and to include a daily regular classroom program for a limited number of hard-core truants.

Title VI Project at Bellevue30)

This program is designed as a transitional program for children discharged from the hospital and out-patients unable to attend regular schools. Children are served on a tutorial, short-term, rotating basis with space for 40 children (20 age 7-11, and 20 age 12-17) at any one time. The project, which is funded federally, was budgeted at $105,000 for 1973/74.

South Beach Psychiatric Center - Staten Island31)

This center serves children age 9-12 in a program along the day-treatment model.

Programs for Children on Home Instruction32)

Several pilot projects located at different agencies involving a small number of home-bound emotionally handicapped children were initiated by the Bureau for the Physically Handicapped to demonstrate that such children (including school-phobic children) could and should be involved in group situations. Home instruction teachers are used with other services provided by the agency. Such programs include: Bronx Children's Hospital Program - for acting-out and psychotic adolescents who are served in a virtual one-to-one ratio, using clinical services provided by the hospital; Coney Island Mental Health Program for five children;[33] and Throggs Neck-Soundview Mental Health Center which serves six older adolescents on an intensive everyday basis. There are also programs run by several BCG centers where children on home instruction participate in discussion groups several days a week, or in different part-time programs.

CONCLUSIONS AND RECOMMENDATIONS

If the pattern which the Division of Special Education is now following is continued, the classes for moderately emotionally disturbed children (B Centers), the few classes for the severely disturbed, and the Resource Rooms will be the major public resource in New York City for the education of emotionally handicapped children. However, under present circumstances, noting particularly the lack of even minimal mental health resources, the major number of these programs do not constitute educational facilities suitable to meet the needs of the children involved as is required under the New York Education Law, Section 4404. That law does not simply require that the child be placed in a different program, but mandates that the program be reasonably designed to permit the child to overcome or achieve within his handicapping conditions. The lack of clinical mental health input in setting up or administering the individual classes, as well as the lack of significant service from appropriate educational specialists, prohibits the qualification of these classes as bona fide special education programs.

Recommendations

a) Greater Services

The authors suggest that unless the services provided for the public classes for the emotionally handicapped are significantly increased, these programs may be judicially challenged as failing to constitute suitable programs within the meaning of the Education Law. Ultimately, governmental authorities will have to recognize that adequate programs for these children are necessarily expensive. The programs currently run in the private sector are costly on a per capita basis, and given the salary and benefit scale of public school teachers and clinicians, equivalent programs will necessarily be more expensive when run by the public system. Furthermore, the public sector is generally serving those who have been rejected by other programs and whose handicapping conditions are frequently compounded by poverty and disadvantage.

b) Mental Health Services

The stalemate between the Board of Education and the Department of Mental Health must be resolved. At a time when there is an on-going unprecedented expansion of services for the emotionally handicapped, that jurisdictional struggle has seriously undermined the planning and implementation of programs, with the negative result that the programs are bereft of adequate services.

c) Community Input

It is questionable whether these programs should continue to be expanded on a massive basis, with little or no community input except for the community school district's decision of whether or not to accept a pre-designed program. Community school districts, schools, and local personnel should be brought in on a planning basis, and should participate in designing the programs needed by their particular community. Some of the most successful programs, in both the public and private sectors, have been designed and carried out on a small-scale basis. Furthermore, since these programs serve children entirely -- or at least principally -- from within an individual school or district, it would be administratively feasible for the districts to operate the programs.

d) Need for Guidelines

Although the authors believe that the communities should have maximum opportunity to shape their respective programs, this must be done under clear guidelines from the central authorities to protect the rights of the children involved. In particular, such guidelines must clarify that school districts and high schools may not prohibit programs for emotionally handicapped children. Although a school district must under statute be consulted before a special program is placed in one of the facilities within its district, the district does not have the right to refuse to serve children within its district, including handicapped children. Districts also should not be permitted to use the subterfuge of lack of space. If a district has questions about the quality or safety of a program, this is a matter which should be heard and resolved before the Chancellor and the Board.

e) Academic Achievement

The programs for most emotionally handicapped children can and should have academic goals. We suggest that the pupils (except those who are severely disturbed) should be given the standardized reading and mathematics tests administered throughout the public school system, as one method, however limited, of ascertaining whether there is any overall academic progress occurring.

f) Discrimination

To determine whether minorities are disproportionately being placed in certain programs, or that the programs are failing to serve certain groups, there should be an ethnic census of the various circumscribed categories or programs for the emotionally handicapped (A Centers, B Centers, Resource Rooms, alternative programs). Elsewhere in this report we suggest a similar census of the private sector and of other related programs.

Endnotes

[1] See Sec. IV, Chap. 2.

[2] Office of Special Education and Pupil Personnel Services, Board of Education of the City of New York, Memorandum Re: Additional Funds Requested in 1974/75 Budget by the Division of Special Education and Pupil Personnel Services, January 23, 1974.

[3] Information on the program for Moderately Emotionally Handicapped Children was obtained primarily from interviews with: Dr. Helen M. Feulner, Executive Directof of the Division of Special Education and Pupil Personnel Services; Stanley Berger, Assistant for Budget and Personnel; Gloria Lee, Administrator, Special Education Services for Emotionally Handicapped Children; Aurelia Allen, Administrative Assistant to Gloria Lee. Additional information was obtained from: three on-site visits to special classes (P.S. 116Q, District 29; P.S. 122Q, District 30; P.S. 169B, District 15); interviews with field personnel in charge of classes for the moderately emotionally handicapped; data provided by the Board of Education, including Division of Special Education and Pupil Personnel Services, Special Education Services for Emotionally Handicapped Children, and "Programs for Emotionally Handicapped Children" (mimeo), Feb. 1974.

[4] *Matter of Nazario*, 11 Ed. Dept. Rep. 110 (1971).

[5] "Programs for Emotionally Handicapped Children," p. 5.

[6] *Ibid.*

[7] *Annual Census*, 1972/73.

[8] Agreement between the Board of Education of the City School District of the City of New York and the United Federation of Teachers, September 9, 1972, Art. IV A 3(b).

Endnotes

[9] A recent table issued by the Division of Special Education reports an average class size of seven ("Report on Special Education Classes Compared with State Standards on Class Size," May 1974).

[10] This conflict is discussed in Sec. III, Chap. 1.

11 Gloria Lee, Letter to the authors, Jan. 17, 1974.

[12] The Fleischmann Commission, for instance, recommends that "wherever possible special classes for the handicapped should be placed in schools with 'normal' children" (Fleischmann Report, vol. II, p. 9.67). However, at least for emotionally handicapped children whose behavior is not acceptable to regular school personnel and/or to other children, there is some question whether the in-school special class does not simply magnify the rejection the child experiences. There are, of course, substantial counterarguments: that the regular school and society should not be able to exclude the emotionally handicapped child with such ease; that in school programs the child is more easily and readily returned to the mainstream; and that the handicapped child not be cut off from experiences with "normal" children.

[13] The sources for this section are those referred to in Endnote 3; additionally, two on-site visits (P.S. 272B, District 18; P.S. 132Q, Annex, District 29); and interviews with field personnel at these centers.

[14] "Programs for Emotionally Handicapped Children," p. 4.

[15] Ibid.

[16] "Report on Special Education Classes Compared with State Standards on Class Size" reveals an average class size of six in the elementary schools, five in junior high schools.

Endnotes

[17] The sources for this section are referred to in Endnote 3; additionally, an on-site visit to a Resource Room program, J.H.S. 192Q.

[18] "Programs for Emotionally Handicapped Children," p. 6.

[19] Information for this section was provided by Dr. Edith Wolfe, Supervisor of Alternate Programs in Special Education Services for Emotionally Handicapped Children; Mrs. Norma Crippen, Guidance Counselor for Alternative Programs; an on-site visit to the Transitional Class Center, P.S. 286, District 22.

[20] "Report on Special Education Classes Compared with State Standards on Class Size" gives an average class size of seven in the elementary schools, five in junior high schools.

[21] Board of Education, Office of the Secretary, Notice of Special Meeting, Proposed Central Programs, ESEA & State Urban Education Fund, 1973/74, Item 32.

[22] This section is based on interviews with: Dr. Joel Rosenheim, Clinical Director of Evaluation & Placement; and Murray Pescow, Administrative Director of E&P, which administers the pre-placement program; and an on-site visit and interviews at a pre-placement program located at P.S. 206, Brooklyn.

[23] The diagnostic functions of E&P are discussed in Sec. II, Chap. 1.

[24] Survey as of April 24, 1974; information provided by Mr. Lawrence Bickell, Division of Special Education.

Endnotes

[25] The authors did not observe the various pilot programs described below; the section is based solely on information derived from interviews and written materials cited. All pilot programs which we were able to obtain any information on are included; however, there may be some projects we were not told about, since there are various programs run by different offices and bureaus.

[26] Section based on information provided by Dr. Helen Feulner, Director of the Division of Special Education; Dr. Edith Wolfe, Administrator, Alternative Programs for Emotionally Handicapped Children; and by a parent whose child has been a participant in the Teacher-Moms program; also Office of Special Education, "Special Education Services for Emotionally Handicapped Children Progress Report, Sept. 1972-73," (July 1973), p. 5.

[27] Section based on information provided by Drs. Feulner and Wolfe; "Special Education Services for Emotionally Handicapped Children, Progress Report," p. 5; Office of Special Education, "Summaries of Reimbursable Programs," September 1972, p. 3.

[28] "Summaries of Reimbursable Programs," p. 3.

[29] Information provided by Bruce Winnick, former General Counsel, DMH, and Norma Crippen, Guidance Coordinator, Alternative Programs for Emotionally Handicapped. Several of the programs planned under this project involve residential placement and are not covered in this report.

[30] Information provided by Irwin Shanes, Director of Reimbursable Projects, Office of Special Education, which provides teachers for this project.

[31] Information provided by Norma Crippen, Alternative Programs for Emotionally Handicapped Children.

[32] Information provided primarily by Dr. Meyer Lieman, Bureau for the Physically Handicapped.

Endnotes

[33] Information provided by Mildred Slainer, Assistant Director, Coney Island Mental Health Clinic. This program is described in detail by Kate Eisenstadt, The Halfway Center for Disturbed Homebound Youngsters, Coney Island Mental Health Service, Nov. 1972.

SPECIAL DAY SCHOOLS FOR THE SOCIALLY MALADJUSTED AND EMOTIONALLY DISTURBED.1)

The Day Schools for the Socially Maladjusted and Emotionally Disturbed (hereinafter referred to as the Special Schools) comprise the second major program,* within the public sector, for emotionally disturbed children. Approximately 2,500 children (fifth grade and above) are currently serviced in these schools. The overwhelming number of these children are poor minority group boys whose behavior has been characterized as "acting-out." Although the Special Day Schools are not consistently considered by the school system to be special education programs for the emotionally handicapped, and are often considered primarily placements for the socially disruptive, there is no doubt that most children in the Special Schools, if evaluated for that purpose, would be found to be handicapped within the meaning of the New York Education Law.**

HISTORICAL BACKGROUND

The Special Day School Program was set up as the "600" school system in 1946 to serve as an alternate program for "the education of children so severely emotionally disturbed or socially maladjusted as to make continuance in the regular school hazardous to their own safety and welfare and to the safety and welfare of other pupils. These children were characterized as defiant, disruptive, disrespectful and hostile to all authority."2) The schools, as they developed, were used primarily to cope with the aggravated gang-delinquency problems of the mid-1940s.3) Many aspects of the schools, originating from that period when they were set up to deal with a social problem, continue to characterize the Special Schools today.

Until the year 1973/74 the Special Schools were administered by the Office of Special Schools, which generally had the responsibility for running educational programs in institutions (including correctional facilities and residential institutions), as well as self-contained special units and schools (such as the school for the deaf). Because that office's functions were defined in terms of organizational structure rather than in terms of educational needs of the children involved, it tended to have a basically administrative orientation. Thus the Special Day Schools were run for the children whom the school system sent to them, much as a school in a hospital or correctional facility is run for the children who happen to be in the facility, with little relationship to the child's career before and after in the school system. Special classes and programs for those specifically defined as emotionally handicapped were run by a separate office.

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*The other major program consists of classes for the emotionally handicapped, principally the B Center program described in Section III, Chapter 2.

**For example, one Special School serving children in grades 5 through 8 referred 30 of their graduating students to a private school program for emotionally handicapped. All were certified to be emotionally handicapped by clinicians. On that basis the State Education Department awarded tuition grants under Education Law, Section 4407.

As part of the reorganization of the operations of the Division of Special Education, one Bureau for Socially Maladjusted and Emotionally Disturbed Children has been set up to* administer both the Special Day Schools and the classes and programs for the emotionally handicapped. This change should help to overcome one aspect of the unnecessary administrative fragmentation in the delivery of services to the emotionally handicapped child.** However, the Special Schools have been in existence in their present form for almost 30 years, and it will be difficult for an administrative reform to overcome imbedded attitudes and structures, particularly since personnel, except at the highest level, will remain unchanged.

CRITERIA FOR ASSIGNMENT TO A SPECIAL SCHOOL

The criteria for placement in the Special Schools has continued to be acting-out behavior. The Board in its descriptive literature on the schools describes the students as being "in the great majority of the acting-out type whose primary behavior disorder manifests itself in repeated disruptive and aggressive behavior, extensive in scope and serious in nature."4) The Board of Education has issued a circular which governs the screening and placement procedure for the Special Schools (Special Circular No. 47).5) According to that circular the criteria for placement is (a) a history of disruptive behavior (not an isolated incident) which endangers others or interferes with learning in the classroom, or (b) a history of truancy, if coupled with disruptive behavior, and (c) a failure to respond to intensive efforts of the home school to help him. The student is also required to have normal intelligence.

Thus, unlike the other special education programs run by the Board of Education, placement at the Special School is not determined by an assessment of the child's handicapping condition, but rather is based on the disruptive quality of his behavior. However, acting-out behavior may be symptomatic of a broad range of conditions ranging from situational maladjustment to brain-damage to psychosis.6)

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*Albert Budnick has recently been appointed as Administrator of the new Bureau of the Socially Maladjusted and Emotionally Disturbed. Because of time limitations the authors have not interviewed him in connection with this report.

**The Bureau will also continue to administer school classes in the following institutions: Day Treatment Centers, Residential Treatment Centers, Institutions for Neglected and Dependent Children, Psychiatric Hospitals, Correctional Centers and Narcotics Centers; but it will not administer such programs as classes in hospitals for the physically handicapped or the school for aphasic children.

Nor is there any requirement that students attending the schools be clinically diagnosed, although the New York State Commissioner of Education's Regulations require school districts to provide an individual psychological examination and social history as well as other suitable examinations and evaluations, as well as periodic re-examinations, for each handicapped child.7) Appropriate clinical or medical evaluations are required prior to placement in all other Board Programs for the emotionally handicapped, as well as in Board Programs for children with other handicapping conditions (such as classes for the retarded or classes for the brain-injured).

Special Circular 47 provides that there are some children who should not be in the Special Day Schools, "but should be cared for in facilities for the very disturbed children." However, at least one Special School principal said that there were seriously disturbed and psychotic children attending the school, principally because there were few alternate residential or day institutions for these students.8) Two other principals characterized the children attending their schools as more seriously disturbed, or "sicker," than in the past. One principal stated that all the children in her school were "emotionally disturbed." One high school principal, however, felt that only a few of his students were emotionally disturbed, defining them as "hell-raisers."

The degree of behavior difficulty in a given Special School varies, to some extent, in terms of the general area the school services, because schools and districts tend to refer students whose behavior is relatively difficult.* The Special High Schools service the most difficult, or a "hard-core" population, because wherever possible the elementary level Special Schools attempt to place as many students as they can in the regular high schools.

Some personnel connected with the Office of Special Schools suggested that the Special Schools would be an appropriate placement for a withdrawn or non-aggressive child (although Circular 47 provides otherwise). However, most Board personnel, including guidance and other pupil personnel workers, considered that these were only facilities for "acting-out" or "pre-delinquent" children. Because such personnel actually make the bulk of referrals, there are few non-acting-out children directed to these schools.

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*The Special School principal has the right to refuse an inappropriate referral, but he must specify his reasons for the refusal and his decision may be overruled by the superintendent in charge of the Special Day Schools (Spec. Circ. No. 47). One school principal reported that she felt that she had to take all children referred; another reported that he refused several children a year as too disturbed, and would refuse a known firesetter, homosexual, or drug-addict.

SYSTEM OF REFERRAL

Referrals to a Special School must be made through the appropriate Superintendent of the community district (or borough district in the case of a high school student).9) In actuality, the home school (normally the guidance counselor) frequently makes arrangements with the Special School, which are then formally carried out through the Superintendent's office. Referral and intake practices vary among districts and among the different individual Special Schools. The referring district must demonstrate that "intensive efforts" have been made to help the child.10) This requirement is presumably intended as a protection against the child being "dumped" into the Special School without any attempt at less drastic alternatives. For the child who does need special education placement, however, the manner in which this requirement is actually carried out (particularly in view of the lack of actual resources available), means that a series of often inappropriate, arbitrary moves are tried (such as transfers to other schools, truncated sessions and principal's suspenses). Thus, even where the child has been identified as emotionally handicapped and in need of a full-time therapeutic program, the Special School is not seen as a preferred treatment choice. This is part of a total pattern whereby the Special Schools are seen by parents and the system alike as a punitive placement for the "bad" child.

Parental permission, in the form of a signed statement, is required for placement in the Special School.11) Whether such consent is meaningful is questionable, however, because of the lack of alternatives open to the parent (usually limited to suspensions, home instruction, or truncated sessions). The majority of children in the Special Schools (about 60%) are placed there as a result of referrals from the child's home school.12)

A student may also be placed in a Special School as the result of a Superintendent's suspension. However, according to Special School data only some 12% of the students are in the schools by way of such a suspension determination.13) Other sources of referrals are other Special Schools, placements from institutions or hospitals, and a small number of children coming off home instruction or medical discharge, or through court or Department of Social Service referrals.

CHARACTERISTICS OF THE SPECIAL DAY SCHOOL POPULATION

The population of the Special Schools is made up overwhelmingly of boys (the schools are not co-ed and only two schools serving a total of some 220 children are for girls, and is almost totally Black and Hispanic. For 1972/73, of a total population of 2,617, 63.9% were Black, 27.7% Hispanic, and 8.4% other.14) The ethnic make-up of the pupil population of the overall New York City Public School System was 36.1% Black, 26.9% Hispanic, and 37% other.15) For at least the last decade there have been complaints about the ethnic imbalance in the make-up of the Special Schools.16)

However, the ethnic disparities become even more significant when compared to the primarily white population of the quasi-public schools (4407 schools) and even the significantly less segregated Day Treatment Centers.17)

According to all personnel interviewed, the pupils come primarily from poor families,18) many of whom have multiple problems. All students in the Special Schools receive free lunch, by qualifying as disadvantaged under New York State's Free Lunch Program. Characteristically the students are severely retarded academically, although not below normal intelligence.19)

FACILITIES AND LOCATIONS OF THE SCHOOLS

There are 18 Special Day Schools, 13 at the elementary level serving boys in grades 5 through 8 or 9, 3 high schools for boys in grades 9 through 12. and 2 schools for girls, grades 7 through 12. The schools service pupils across community district lines and, with exceptions, are not neighborhood based. In the gang period when the Special School system originated, schools were purposely located away from home neighborhoods so that gangs could be dispersed to different schools over the city. In some cases, school buildings no longer needed by the general school population have been used for Special Schools. Although the need for community based facilities is now generally recognized, many of the schools continue to be poorly located in relation to the population in need of the service, or in totally inadequate buildings. The disadvantageous locations probably contribute to the high truancy rate in some Special Schools and may be a reason why some schools are under-utilized.20) Of the three high schools for boys, two are located in lower Manhattan and one in downtown Brooklyn. Queens, the Bronx, and Staten Island have no high school service.

Students are provided with free public transportation, either tokens or bus passes. However, handicapped children attending the private schools or special education programs, receive door-to-door transportation when requested (primarily for younger children).21) The failure to provide such transportation for the Special School, even for younger children (some of whom are referred specifically because of a history of truancy, and who must take a long and difficult trip), is another consequence of the failure to view these children as handicapped.

A further result of the fact that the schools are not located in the student's home area, is that it is difficult for the schools to maintain contact with the family or to work with the family's community resources (such as clinics, agencies, youth centers), even where available, to provide the type of total therapeutic plan many of the Special School students require. Moreover because the schools are not neighborhood based or part of the organization of the community school districts, there is little feeling or community responsibility for the school, either in terms of supporting requests for needed personnel, facilities, and services, or in insisting that the schools provide service of a certain minimum quality.

ORGANIZATION AND SERVICES

Class Size

By New York City Public School System standards the Special Schools are small, with registers of less than 100 to 275. Teachers are assigned to the schools based on a class size maximum of 15, mandated by the teachers union contract,22) although the State regulations provide for a maximum class size of 10 for emotionally handicapped children.23)+ Extra teachers are also assigned to cover "teacher preparation periods" and other teacher free periods (such as lunch), also mandated by contract.24) Because of these extra teachers, the pupil-personnel ratio at any given school would cause one to over-estimate the amount of instructional time spent with students. However, since the schools have characteristically low attendance rates, classes normally average between 10 and 12 students in attendance.25)

Such a comparatively large class size by special class standards, working with one teacher is a serious obstacle to running an effective program where the characteristics of the student's handicapping conditions include highly disruptive behavior, severe learning disabilities, academic retardation, and excessive demands for attention. In the schools visited by the authors the principals had arranged their staff to achieve a class size of six or seven, or some equivalent, for part of the school day. Private schools serving emotionally handicapped and brain-injured children have a class size of eight or less, as do public school classes for severely disturbed or brain-injured children. The Bureau for the Emotionally Handicapped has also found that its original class size for the moderately disturbed (B Centers) of ten to twelve was unmanageable. A maximum of seven or eight children is highly recommended by authorities in psychology and special education.*

Teaching Faculty

The Special School teachers are not required to have a special license, and in fact the principals of the Special Schools have greater flexibility in choosing their staff than in the rest of the school system, since they can select teachers within a wide range of licenses.** The principal also has

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+Personnel in the Division of Special Education have reported that the City Bureau of the Budget is now requiring classes be brought up to the 15 maximum (as of fall 1974).

*Revealingly, class size in the Special Schools has been determined by Union contract, whereas class size in other programs for the handicapped has been determined by an assessment of the needs and practicalities of working with a particular type of handicapped child.

**Over and above the New York State teacher certification requirements, the City of New York has its own system of teacher licensing, under which licenses are granted in discrete categories (based on written examination and qualification requirements). There is presently no particular city license for teachers of emotionally handicapped or for teaching in the Special Schools, and the principal may hire teachers with a broad range of licenses. Teachers in the Special Schools do receive a bonus of $600 yearly. Beginning February 1975 the state will require special certification for teachers of special education (with exceptions for teachers already serving) (Regulations of the Commissioner of Education, Sec. 80.6).

considerable freedom in how he utilizes the teachers assigned to him.

According to the Special School personnel interviewed, schools of education have generally not recognized the Special Day School as a "special education program" (the Education schools have been oriented toward specific physical and mental handicapping conditions); therefore the special education graduates typically have not been employed in the Special Schools.* The Special Schools have also been criticized for having a disproportionate number of physical education and industrial arts teachers on their faculties.**

Supportive Services

By design, the Special School program is intended to include a high degree of clinical and guidance service.26) The schools are provided with a greater degree of auxiliary services than is available to either the regular school programs or most of the Special Classes for emotionally handicapped and other handicapped children. Each school is assigned: one guidance counselor and in some cases a part-time second counselor; a teacher designated by the principal as a "reading specialist" (the qualifications and experience of the specialist vary from school to school); in some cases, a "reading and learning disabilities specialist" provided through federal Title I funds to work with a target population within the school; a clinical team consisting of a social worker and psychologist two days a week each; and a psychiatrist on call or one-half day every two weeks. Classroom teachers usually do not have the assistance of para-professionals although there may be one or two in a school. Some schools obtain extra services through student teachers or other school-initiated programs.

The mental health and other supportive services, however, are not sufficient to cope with the needs of the Special School pupils whose emotional and learning problems are typically compounded by poverty and social deprivation, normally requiring extensive outreach efforts by the clinician involved. The degree of supportive service compares unfavorably to that provided by the private sector (although in the latter case many families can afford and avail themselves of therapy and assistance outside of the school). Because inadequate services are available through the Special School, the City often ends up in providing equivalent services through the courts or other agencies, often in a diffuse and wasteful manner. Additionally, the part-time BCG service in the Special Schools suffers from the same diffusion of accountability which has been described previously in reference to BCG, since the clinicians are responsible to an outside agency rather than to the school's principal.27)

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*The availability of trained special education teachers for the Special Schools may increase in the face of the present teacher surplus, and in the greater emphasis on special education in the schools of education.

**In one school, for instance, P.S. 12 in the Bronx, out of an instructional staff of 25, 4 teachers are industrial arts teachers and 2 are physical education teachers.

Most of the Special Schools do not have attendance teachers as part of their faculty, despite the fact that truancy is a serious problem in the Special Schools. The average daily attendance in the day schools as of March, 1973 was 67%. In five of the schools average attendance was under 60%.28) In fact, some of the students have been placed in the Special School partially because of their aggravated truancy.29) Under the present scheme, attendance is considered to be the responsibility of the students' respective home districts. However, the already overcommitted district attendance teachers give Special School attendance a low priority.

When through special funding a few of the schools were provided intensive attendance service for a target population of truants, it was found that the service improved the attendance by more than 10% for 93% of such students. For the school population not receiving this service there was no perceptable improvement in attendance.30)

The Office of Special Schools was able to provide the authors with a partial estimate of the per capita cost of the Day School program. For the year 1972/73, that figure was $2,565. This represents purely instructional costs and does not include the centralized administrative costs, transportation, hourly employees, clinical support services (BCG), building and maintenance costs.31) That relatively high figure, of course, reflects primarily smaller classes in the Special Schools.

Program

In its curriculum bulletin on teaching in the Special School, the Board of Education suggests that in those schools "the emphasis is primarily upon the remotivation and guidance of pupils so that each may be helped to acquire academic, economic, and social skills, and thus to attain favorable personal and social adjustment."32) Among personnel in the schools, some hold the view that the primary objective of the schools is to change behavior. One evaluation report on the Special Schools suggested that "most of the schools admittedly emphasize improvement in personal-social conduct and adjustment over academic learning."33) At the same time because of the aggravated reading retardation of the Special School pupils, as well as the prevalent societal concern with reading failure, improvement in basic reading skill is now generally considered to be an important goal of the program of the schools.

There are conflicting viewpoints among Special School personnel as to whether the purpose of the schools is to return the child to the mainstream of the educational system as quickly as practicable,34) or rather, as practiced by most of the schools' principals, it is to maintain the student within the program for the full length of that school's program.35) The latter practice is in part a product of the fact that there are few transitional or auxiliary resources in the regular school programs to provide a bridge or intermediate situation for the student coming from the insulated Special School. Except for the high schools, however, the Special School programs cannot be considered terminal programs since most of the Special Schools serve fifth to eighth or ninth grade students whose education does continue in some manner on leaving those schools.36)

The individual principals are permitted great freedom in designing and carrying out their programs, which vary considerably from school to school. All the schools put stress on reading (and math to a lesser degree), but also heavily emphasize shops and industrial arts subjects. Teachers with these specialties are on the faculty of each school. Of the four schools observed by the authors, each had distinct program features. In one elementary school the students select their own program daily on a first-come first-served basis; the objective of the program design is to develop initiative and responsibility. Reading and math are mandatory each day and are taught by all teachers in the school, allowing a reasonable seven-to-one teaching ratio for the basic subjects. Other subjects such as shops consequently have larger classes. The other elementary school visited used a spring intake process, rather than waiting to have the student transferred on a punitive basis from the home school. That same school developed a reading prescription for each student and was served by a college internship program which provided a one-to-one relationship for the pupils involved. The girls' high school visited had what was described as a totally individualized program for each student, including a part-day work program at paying jobs for the students ready to participate in such a program. The boys' high school suggested that it followed a normal curriculum but on a simplified, reduced level, and carried out its program in a controlled atmosphere, and emphasized sports.37)

Reading Achievement

The necessity for coping with the underlying problem of reading retardation is now generally recognized within the Special School system. Each school is provided with at least one reading teacher through tax levy funds and the Special Schools Title I program is primarily devoted to improving reading skills.* However, on the basis of the limited evidence available, the Special Schools have not been able to deal adequately with the problem of reading retardation.

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*The Title I program for 1973/74 provides 11 "reading and learning disabilities" teachers to work with a targeted population in the 17 schools. The emphasis on reading also reflects priorities set by the state for its Title I program. The Title I program in addition to funding 6 guidance counselors and some related services, funds 13 supervisors of learning-disabilities/curriculum-developers teacher trainers (who are in fact assistant principals who have always been in the schools).

The Office of Special Schools personnel informed the authors that reading tests were not administered to the Special Schools on a standardized basis, and that they were unable to provide us with meaningful data on the reading levels at the schools on either an individual or overall basis. However, one member of the central staff suggested that at least 85% of the Special School students are two years or more retarded in reading,38) and statistics he showed to us from one school indicated that fifty percent of that school's population was at least four years behind, with some students as much as six years behind. In the recent evaluation by the American Federation of Teachers, it is reported, on the basis of information obtained from the Office of Special Schools, that 76.5% of the pupil population are 2 years or more reading retarded (76.1% of the elementary school population39).)

In one elementary school visited by the authors, we were informed that the average reading grade, as of October 1972, was 2.8 (in the prior year the October average was 3.0, the May average 3.6). The Title I evaluation of the Special Schools for the year 1970/71 found an average retardation level of about three years in both reading and arithmetic.40)

These figures, of course, reflect the reading levels of the students when they enter the school as well as achievement in the Special School program. However, other data indicates that the schools have not been successful in effecting the kind of programs required if the students are to overcome their characteristically severe reading retardation. The original objective of the Special Schools Title I program in reference to reading was to raise the reading grade level of 60% of the participants (continuously enrolled in the program from October to May) by one year.41) In both 1970/71 and 1971/72 only slightly over 30% attained this goal, with another 26% and 20% respectively gaining between one-half and one year's growth.42) The 1971/72 evaluation report concluded that the consistent failure of the schools to meet the original goal, indicated that the aim was unrealistic. The evaluators suggested that the fact that a small majority of the pupils did show a gain of one-half year indicated that this was a reasonable academic growth level for the socially maladjusted and emotionally disturbed children who participate in this particular program.43) The Title I program objectives for 1972/73 and for this year (1973/74) were modified to reflect this perception and aim at raising achievement levels of program participants by a statistically greater amount.44)

The authors suggest that at such a limited rate of progress, students could not be expected to ever reach a reading level commenserate with their age group and potential abilities. The students participating in the schools' programs, by the Board's own criteria, must have normal intelligence, and a therapeutic program of intervention should at least have the expectation of substantial progress. Furthermore, since the schools are working with students at the fifth grade level and above, it would be impossible for them to do meaningful academic work appropriate to their age level without having basic reading skills. Moreover even from the view of those who see the schools primarily as a socializing institution, it is clear that the experience of being in school, but unable to even read assignments or cope with rudimentary academic work, must have a cummulative destructive effect. In fact, frustration over academic failure is a causal factor in many instances of the disruptive school behavior which resulted in the special placement. Furthermore, in a contemporary society it is not possible to be an "adjusted" participant in the economic and social community without the ability to read. It is evident that if the schools which are primarily educational institutions cannot overcome academic retardation, the student will continue to be handicapped.[45]

EVALUATION OF SUCCESS OF THE SPECIAL SCHOOLS PROGRAM

This report has focused on reading achievement because the authors view that success in this area necessarily underlies other attainments in a school program for students of normal intelligence and potential. Reading level achievement has been the principal objective criteria, however limited, of measuring the success of a school program. Although, unlike many of the programs referred to in this report* no evaluation has been done which would demonstrate the long term success of the program in improving the life adjustment of the pupils. Nor has there been any systematic follow-through with the student to even assure that he adjusts to his next school placement, although the authors were informed that the Special School guidance counselors do maintain contact with the students on an informal basis,[46] and one principal told us that it was his impression that the students did about as well as others in the city school system.

It is the authors' impression that the Special Schools do achieve a controlled environment for the students while they are in the school building and that the atmosphere in that respect compares favorably with the chaotic atmosphere in some city schools.[47] There is a serious question, however, as to whether the students internalize that control. Some personnel expressed the sentiment that if the schools are able to hold the students through the difficult adolescent period, they will have overcome most of their problems. Since the Special School students have characteristically been involved in anti-social behavior it would seem essential, from social as well as an educational view, to determine systematically how successful that program has been in bringing the participants back to the mainstream.[48]

Effect of Centralized Administration

Despite the fact the schools have been under the administration of a centralized office, it is the authors' observation that they actually operate on a decentralized basis, with very little expertise and support emanating from the central office. Where there was innovation in the schools, such as the programs described previously in this chapter, it had originated with field personnel rather than with the centralized office. Two of the principals interviewed reported that the central office had shown no interest in the type of program the school ran, or in promoting positive aspects of such programming in the other Special Schools.49) Furthermore, the authors could find no evidence of joint planning between the central office and former office of Special Schools either in terms of total planning for the emotionally handicapped or in terms of long-term planning.

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*The special classes described in Sec. IV, Chap. 1 have in the main been established within the last several years.

CONCLUSIONS

Whatever the assets of the individual Special Schools' programs, the authors found that in the view of both the school and the general community the Special Schools are still seen as a custodial, segregated placement for disruptive and disturbing students. There are conflicting views within the Special School system on whether these schools are alternative programs for the "socially maladjusted" students who cannot be tolerated within the school system, or whether they are special education programs for the emotionally handicapped. Despite the acknowledged need for more services for the emotionally handicapped, there has been no particular drive to expand this particular program. This is partially because of the desire to keep students out of insulated Special Schools and in in-school special programs (such as special classes) where possible, but in part it is because of the continuing adverse community attitude toward these schools.

The Special Schools have not demonstrated that their program of intervention has been successful either in rehabilitation on a long-range basis, or in giving the students a satisfactory academic background. However, the limitations of the program must be viewed in light of the total system of services for the emotionally handicapped and the fact that these schools serve a population who have been rejected by, or failed in, other programs. At the same time the Special Schools, although they have more services and smaller classes than the regular school system, have not been invested with the resources adequate to meet the compound needs of the pupils involved.50)

RECOMMENDATIONS

1) Diagnosis and Evaluation: All students placed in Special Schools, whether by consent or as a consequence of suspension, should be provided with a physical, psychological diagnosis, and evaluation.

2) Services: Concommitantly the schools should be provided with the adequate therapeutic resources to follow up on the recommendations made; clinical and guidance services should be fully integrated into the school organization; clinicians should be required to perform on an outreach basis that is necessary in dealing with a socially and economically deprived population.

3) Truancy: Adequate attendance services (attendance teachers or some alternate service) should be available to overcome the persistent problem of truancy. While schools should be neighborhood based, recognizing the reality of the present inconvenient location of schools, door-to-door transportation by

mini-van, such as is available for handicapped private school students, should be provided for younger pupils required to take long or inconvenient trips (such service would not be appropriate for older students).

4) Decentralization: Special Schools should be neighborhood and community based, and ultimately should be under the jurisdiction of the respective community school districts. Decentralization could be phased-in on an interim basis starting with Special Schools which have a close relationship with a community district, or could be administered jointly by two school districts. The decentralized Special Schools would of course continue to be subject to the policy-making authority of the Board of Education and could be provided with expertise and support from the Division of Special Education. As an alternative to the Special Schools, those community districts which lack such a service may wish to "contract out" with a private facility to run such a program.

5) Segregation: Elsewhere in this report the authors have made recommendations as to opening up alternative resources (such as the private sector) to poor and minority students and to students from difficult and uncooperative families. Such a policy, as well as the expansion of alternatives in school programs for the emotionally handicapped, should undercut the current segregated pattern in the schools. Clearly the continuing racially imbalanced aspect of these schools contributes to the adverse community attitude toward the schools.

6) Academic Achievement: Standardized reading and math tests, administered throughout the school system, should also be administered to the Special Schools. It is essential for the system to face up to whether these schools are providing an equivalent academic experience for their students. Whatever the limitations of the reading tests, in measuring the achievement of an individual child, they do give an average picture of the level of the school. Additionally, the Special Schools should not rely on the yearly Title I evaluation but should undertake its own evaluation of the comparative success of the programs in the different schools.

7) Transitional Services: These should be provided as a follow through when the student leaves the Special School to enter a public high school or other program. In the high school chapter, the authors will point out the need for a transitional type of program in the high schools which would service students coming from the Special Schools as well as other contained programs. Some students, however, might be more appropriately placed in a school (such as a special-talent school) where such a program would be impractical. Even in the latter case, there should be a systematic follow-through to support the student in the new and comparatively uncontrolled situation.

8) Evaluation: An evaluation study should be undertaken to determine the long-range effectiveness of the Special School program. The study should deal with such questions as how many special students obtain high school diplomas, how many are employed 10 years later, how many are involved with the criminal justice system 10 years later.

9) **Program**: This report has not attempted to evaluate the particular design of any special education program, both because it was felt that in a survey study such as this, we were not in a position to make a responsible analysis of that nature and because we felt that there is a positive need for different approaches in the area of education of the emotionally handicapped. However, we would suggest that whatever different styles the various Special Schools may follow, it is essential that real learning goals are a basis of the program. For it to be otherwise is to violate the right of the students to an "education" guaranteed by the New York State constitution and statutes, as well as to be fundamentally unsound therapeutically.

Endnotes

[1] The information in this chapter is derived in part from interviews conducted during the year 1972/73 with Murray Hart, then Superintendent in Charge of the Office of Special Schools (District 75) (now reassigned); Emory Hightower, then Director, Schools for the Socially Maladjusted and Emotionally Disturbed (SMED schools) (now retired); Evelyn Zwicker, Administrative Assistant, Office of Special Schools; Murray Scharin, Administrative Assistant, Special Schools; on-site visits to two Special Schools at the fifth through eighth grade level (P.S. 4Q, Queens, P.S. 371K, Brooklyn) and two Special Schools at the high school level (P.S. 8, Manhattan - girls, and P.S. 58M, Manhattan - boys). Follow-up interviews were conducted during 1973/74 with Mr. Scharin, who also provided the authors with written materials and data. Additionally, William Jesinkey, one of the co-authors of this report, was a guidance counselor in the Special Schools from February 1965 to December 1972; this chapter also reflects his experience. Other major sources of background on the Special School program include: Alfred J. Kahn, *Planning Community Services for Children in Trouble*; Joan D. Goldman, "Special Day Schools for Socially Maladjusted & Emotionally Disturbed Children, New York City," (mimeo) American Federation of Teachers, Washington, D.C., 1973 (*Goldman Report*); Title I evaluation reports for the years 1970/71, 1971/72, 1972/73: Teaching and Learning Research Corp., "Final Evaluation Report, Improving Instruction and Services in Schools for Socially Maladjusted Children, 1970/71," 1971 (*Evaluation Report*, 1970/71), The Psychological Corporation, "Final Evaluation Report for Improving Instruction and Services in Schools for Socially Maladjusted Children, 1971/72" July 1972 (Evaluation Report, 1971/72), Teaching & Learning Research Corp., "Final Report, Improving Instruction and Services for Socially Maladjusted and Emotionally Disturbed Children, 1972/73," 1973 (*Evaluation Report*, 1972/73); *Yesterday, Today and Tomorrow*, Committee Study, June 1964 to February 1965, a report to the Superintendent of Schools, Board of Education of New York City, and Citizens Committee for Children of New York, Inc. "The '600' Schools Sound Planning Still is Needed," New York, June 1965 (largely a critique of *Yesterday, Today & Tomorrow*). Also see Edward Hoffman, *The Treatment of Deviance by the Education System*, Conceptual Project in Child Variance (Ann Arbor: University of Michigan, 1972).

[2] *Yesterday, Today and Tomorrow*, p. 1. The term"600" was dropped in 1965, because it had developed adverse connotations.

[3] As reported by Special School personnel; also see the *Goldman Report*, p. 2.

[4] Office of Special Education, Board of Education of the City of New York, "Special Schools," February 1973, p. 1.

[5] Special Circular No. 47, 1972/73, Board of Education of the City of New York, Office of the Deputy Chancellor, Nov. 22, 1972.

Endnotes

[6] Group for the Advancement of Psychiatry: Vol. VI, Report No. 62, June 1966 Psychopathological Disorders in Childhood: Theoretical Considerations and a Proposed Classification, at p. 246.

[7] Regulations of the Commissioner of Education, Sec. 200.2. In fact many of the children involved have been evaluated sometime in their prior careers, and such evaluations, as well as other data, are sent to the Special School. Emory Hightower, former director of SMED, told the authors that his bureau was committed to having all children evaluated; however, field interviews indicated that this was not a systematic practice.

[8] Esther Rothman, Principal, P.S. 8M, until 1973, the only Special School for girls in the city. For an extensive discussion by Dr. Rothman of that school, see Esther Rothman, The Angel Inside Went Sour (New York: Bantam Books, 1970). That the Special Schools are the only available alternative for needed institutional treatment is also suggested in Yesterday, Today and Tomorrow, p. 3. The difficulty of obtaining instructional treatment for certain children and the discriminatory aspect of this are fully documented in Committee on Mental Health Services Inside and Outside the Family Court in the City of New York, Juvenile Justice Confounded: Pretensions and Realities of Treatment Services (Paramus, N.J.: National Council on Crime and Delinquency, 1972) and is also the basis of a class action lawsuit, Wilder v. Sugarman, 73 Civ. 2644 (S.D.N.Y.).

[9] Spec. Circ. No. 47.

[10] Ibid.

[11] Ibid.

[12] Derived from statistical data on admissions, September through April, 1972/73, provided by Office of Special Schools.

Endnotes

[13] Derived from Special Schools data on admissions, between Sept. and April 1972/73. Some 143 of admissions were a result of District Suspenses (the Bureau of Attendance reports 151 such suspension placements in Special Schools during that same period).

[14] Derived from Board of Education, "Report of Special Schools on Pupil Accounting 1972/73" (May 10, 1973).

[15] Office of Business and Administration, Board of Education of the City of New York, "Annual Census of School Population, October 31, 1972, Summary Tables," p. 7.

[16] Yesterday, Today and Tomorrow, p. 8; Goldman Report, p. 4.

[17] See Sec. V, and Appendix

[18] In its description of the Special Schools for Title I funding, the Office of Special Schools states that "the vast majority of these children are minority group youngsters from impoverished areas of our city." (Title I Proposal, Improving Instruction and Services for Socially Maladjusted Children, 1973/74, #09-41694).

[19] Ibid. The proposal states that "more than 85% of these children are retarded two years or more in reading." Some of the personnel interviewed suggested that many of the students were in fact bright and that their aggressive behavior was a response to adverse family and social circumstances (rather than passive acceptance). Most personnel felt that the students were not heavily drug involved; however, the Special Schools have a severe truancy problem, and the truants may include drug-users.

Endnotes

[20] P.S. 12 in the North Bronx, P.S. 9 in Maspeth Queens, P.S. 23 in Flushing Queens, P.S. 148 in Manhattan, Upper West Side, are examples. P.S. 148 is intended to serve children from Harlem. Although the school has a capacity of at least 160, only 104 children are enrolled, and the school has an average attendance of 59% (as of March 1973). On the other hand, some areas of the city with a great need for service have no reasonably accessible school (Rockaways, South Jamaica). P.S. 23Q in Flushing, P.S. 141 in Brooklyn and P.S. 185X, Bronx, are examples of antiquated, highly inadequate buildings. Reports on the Special Schools have consistently criticized the buildings and locations, e.g., see Yesterday, Today and Tomorrow, p. 20; Evaluation Report (1972/73) p. 65; Goldman Report, p. 26.

[21] The provision of transportation for handicapped students is discussed in Sec. II, Chap. 2.

[22] Agreement between the Board of Education and the City School District of the City of New York and the United Federation of Teachers, covering Day School Classroom Teachers, et al., 1972 (UFT Contract), Article IV, Sec. (A) 6c.

[23] Regulations of the Commissioner of Education, Sec. 200.3 (3)(b)(2)(ii). Under newly premulgated regulations of the Commissioner a pupil/teacher ratio not to exceed 8/1 is required for severely emotionally disturbed children (Comm. Regs, Sec. 200.6 (3)). A study of public special education programs throughout the United States in 1970 found 10 students to be the modal figure for maximum class size for emotionally handicapped children (Alfred Hirshoren, Edward Schultz, Anne Manton, Robert Henderson, "A Survey of Public School Special Education Programs for Emotionally Disturbed Children" (Special Ed. Mono No. 1-70, University of Illinois, Urbana, 1970), p. 39.

[24] UFT Contract, Art. IV (A).

[25] Goldman Report, p. 3.

[26] Board of Education of the City of New York, Office of Special Services, "Curriculum Development Program, The Therapeutic Environment," p. 1 states that "guidance programs are purposefully woven into every phase of the school's program. Clinical and guidance personnel are assigned to work with individual children, with groups of children, and with the entire school staff."

Endnotes

[27] See Sec. III, Chap. 3. The amount of guidance service in the Special Schools has actually declined. Formerly there were two full-time guidance counselors in each Special School ("Curriculum Development Program, The Therapeutic Environment," p. 1); presently the smaller schools have only one full-time counselor, larger schools have the part-time service of a second counselor (some counselors serve three schools), funded through Federal Title I monies. Special Schools personnel, as well as evaluations of the Special Schools, have, over the years, stressed the need for greater clinical mental health services. (See Yesterday, Today and Tomorrow, p. 44; Evaluation Report, 1972/73, pp. 66, 67; in its official response to the recommendations of the 1972/73 Evaluation Report, the Office of Special Education states that "due to limitations of funds, the existing city tax levy program, which provides limited clinical services in the form of **psychologists**, psychiatrists and social workers as well as attendance support, will not be supplemented by Title I funds. Although we consider these services critical in the overall treatment plan for these children we find it necessary to attempt to meet these needs with the support of guidance counselors only." (Title I Proposal, 1973/74, #09-41694).

[28] Register Report, District 75, Board of Education of the City of New York, for period ending March 31, 1973. Average daily attendance in the school system as a whole was 83.41% (Board of Education, Bureau of Attendance, "Report on Pupil Attendance by School District or Centrally Controlled Group, 1972/73").

[29] See endnote 5.

[30] Evaluation Report, 1972/73, pp. 53, 54; the special attendance program was part of the 1972/73 Title I program; it was not renewed in 1973/74. As has been true in reference to other recommendations in regard to the Special Schools, evaluation reports have consistently recommended full-time intensive attendance service. See endnote 27. Some schools with poor attendance are assigned less teachers than their registers would otherwise merit so as not to waste teaching positions. A more appropriate response would be intensive efforts to overcome truancy.

[31] Source: Evelyn Zwicker, Administrative Assistant, Office of Special Schools.

Endnotes

[32] "Curriculum Development Program, The Therapeutic Environment," p. 1.

[33] Evaluation Report, 1971/72, p. 66; Evaluation Report, 1970/71, p. 41, states, in reference to the Special Schools, that, "(i)t is certain that there is a professional disagreement concerning the relative importance of an academic orientation in this type of program." The Goldman Report, p. 15, says that "in interviews nearly all [principals] indicated that ... change in behavior was the primary goal."

[34] Goldman Report, p. 15.

[35] As stated to the authors by the principals interviewed. The Goldman Report, p. 27, also found maintaining the student in the Special School to be the practice, as did the Evaluation Report, 1971/72, p. 28. One exception the authors found was the boys Special High School. Pupils who were to obtain high school diplomas had to return for at least one term, since the Special School could not grant diplomas.

[36] For instance, according to "Annual Report of the Office of Special Schools" for the year June 1971 - June 1972 only 173 pupils returned to a regular New York City school, whereas in June 1971, 437 graduated to regular high schools and a similar number were expected to be graduated to a regular school in June 1972.

[37] More detailed program descriptions of the programs at some of these schools, as well as at other Special Schools, appear in Goldman Report, pp. 10-26; Evaluation Report, 1971/72, pp. 12-16.

[38] Source: Irwin Shanes, Coordinator of Reimbursable Projects, Office of Special Schools, the Special Schools Title I proposal for 1973/74, states that "(a) recent survey of the various formal and informal tests of the reading abilities of these children reveals that more than 85% of these children are retarded two or more years in reading."

Endnotes

[39] Goldman Report, p. 14.

Table VI
Reading Retardation 1972/73

	P.S.	students enrolled (a)	more than 2 yrs. (b)	% more than 2 yrs.	more than 3 yrs. (c)	% more than 3 yrs.	more than 4 yrs. (d)	% more than 4 yrs.	total b,c,d	% total
girls high school	8M	119	14	11.8	6	5.0	16	13.4	36	30.2
boys' high schools	58M	202	28	13.9	37	18.3	94	46.5	159	78.7
	91M	127	45	35.4	47	37.0	15	11.8	107	84.2
	85K	254	31	12.2	56	22.0	155	61.0	242	95.3
	total	583	104	17.8	140	24.0	264	45.3	508	87.1
junior high schools	82M	101	9	8.9	19	18.8	60	59.4	88	87.1
	148M	114	8	7.0	26	22.8	76	66.7	110	96.5
	169M	114	34	29.8	19	16.7	3	2.6	56	49.1
	12X	225	62	27.6	63	28.0	62	27.6	187	83.1
	185X	122	28	22.9	28	22.9	58	47.5	114	93.4
	36K	161	20	12.4	41	25.5	87	54.0	148	91.9
	369K	157	25	15.9	31	19.7	13	8.3	69	43.9
	370K	165	28	17.0	38	23.0	45	27.3	111	67.3
	371K	172	2	1.2	30	17.4	34	20.0	66	38.4
	4Q	157	13	8.2	31	19.7	109	69.4	153	97.4
	9Q	155	17	11.0	40	25.8	84	54.2	141	91.0
	23Q	93	19	20.4	25	26.9	25	26.9	69	74.2
	75Q	102	31	30.4	30	29.4	25	24.5	86	84.3
	total	1838	296	16.1	421	22.9	681	37.0	1398	76.1
total all schools		2540	414	16.3	567	22.3	961	37.8	1942	76.5

(a) Register as of May 31, 1973.

(b) How many students are retarded in reading more than 2 years but less than 3 years.

(c) How many students are retarded in reading more than 3 years but less than 4 years.

(d) How many students are retarded in reading four years or more.

(continued)

Endnotes

39 (cont.) Although the authors of this report repeatedly asked the Special School administrative personnel for reading statistics, we were not provided with the data which appears in the Goldman Report. It should be noted that a variety of reading tests are used, which may be an explanation for the wide variation between schools. For instance, P.S. 371K is shown as having only 38.4% reading two years or more below grade level, whereas P.S. 4Q is shown as having 97.4% below grade level. Special Schools personnel were unable to explain this discrepancy.

[40] Evaluation Report 1970/71, p. 28. This finding was based on a sample of 510 children. The average reading grade equivalent was 4.32 (S.D. = 1.86), the arithmetic equivalent was 4.55 (S.D.=1.38) whereas the average grade placement of the group was 7.6 (S.D. = 2.3). The more recent Title I evaluation reports have not contained corresponding data; however, the Evaluation Report 1972/73, p. 42, shows that for pupils participating in the Title I program, pre-test and post-test reading score data were available for 592 students in the elementary-junior high schools: the pre-test mean was 3.22 (S.D.=1.22), post-test mean 4.01 (S.D.=2.51). For 91 secondary school students, the pre-test mean was 4.96 (S.D.=1.83), post-test mean 5.73 (S.D.=2.16). According to the 1972/73 report a variety of reading tests were used and not all pupils were given the same test.

[41] Evaluation Report 1971/72, p. 3.

[42] Evaluation Report 1970/71, p. 28; Evaluation Report 1971/72, p. 65. (The data from the two years is not totally comparable, since 1971/72 may include test results from other programs administered by the Office of Special Schools.) Data kept by the Office of Special Schools as reported in Goldman Report indicates a similar level of reading progress, 23.8% achieving 1 year or more growth, and 23.5% 1/2 to 1 year (this data, however, relates to those on register as of May 31, rather than just those participating in the program from October to May). The Evaluation Report 1970/71, p. 28, also found no statistical correlation between academic achievement and either attendance or time spent in the program; suggesting, according to the Report, the limited academic impact of the school program (p. 28 and p. 41).

[43] Evaluation Report 1971/72, pp. 66 and 78.

Endnotes

[44] Evaluation Report 1972/73, p. vi, Objective No. 1; Title I proposal for 1973/74, p. 48 - Objective (a). The Evaluation Report 1972/73, pp. 41-2, found that for 683 Special School students for whom pre-test and post-test scores were available (the high mobility rate of the students resulted in a loss of post-test data), there were statistically significant gains in reading achievement over and above the gains that would have been expected for those students. N.B. - a variety of tests were used, selected by the individual schools.

[45] A similar view is discussed in an article by Edmond W. Gordon, "A View of the Target Population" in Abraham J. Tannenbaum, Special Education and Programs for Disadvantaged Children and Youths (Washington, D.C.: Council for Exceptional Children, 1968), p. 15.

[46] The Goldman Report, while generally favorable toward the Special Schools program, concludes that there has been a failure to provide follow-up for the student returning to the regular school, and of the failure to evaluate the long-term effects of the intervention of the day school program (Goldman Report, p. 28).

[47] This conclusion is based on the authors' on-site visits to four Special Schools and to numerous regular New York City public schools; this has also been the tone of the observation of other evaluation projects, Goldman Report, pp. 10-26. (In only one school, the girls' high school, did the authors observe seriously disruptive behavior.)

[48] The Title I evaluators attempt to make an analysis of the social and emotional growth of the students based on teacher examination, and the Office of Special Schools also maintains such data on the individual school's estimation of the number of students making an acceptable behavior adjustment. Such reports show a substantial majority making an improvement or adjustment in behavior. However, the subjective quality of any such determination, plus the inherently self-serving nature of an affirmative determination, in the authors' view, undermines the meaningfulness of any such figures. For instance, for the year 1972/73 P.S. 85K reported that 248 of its 254 students (97.6%) adjusted in behavior (Goldman Report, p. 18, Table VIII), whereas the average daily attendance at 85K for that year was only 43.77% (Report on Pupil Attendance, 1972/73), hardly a figure indicating good school adjustment. Similarly, surveys of students to ascertain their attitudes generally reveal favorable perceptions toward school, but even the evaluators themselves suggest bias in such a survey (Evaluation Report 1972/73, p. 63).

Endnotes

[49] The Evaluation Report 1970/71, p. 41-2, similarly found that there was "a great deal of variation in the ways the schools are going about the remediation of academic deficits" and recommended that "(a) careful examination should be made of these methods; communication among participant schools could be improved, and some overall monitoring provided. Currently the schools operate more as separate entities rather than as a cohesive 'program'."

[50] The failure of coordination between the administrators of special classes and the administrators of Special Schools hopefully will be overcome by the reorganization of both of these programs into one bureau. The lack of success in effecting academic achievement should also be judged in the light of the problem of pupil turnover in the schools. For instance, of the 2,476 students on register in the Special Schools as of May 31, 1971, only 1,520 (61%) had been on register since Oct. 1, 1971. "Report of Special Schools on Pupil Accounting - 1971/72" - Special Day Schools.

OTHER CENTRALLY ADMINISTERED PROGRAMS

The Division of Special Education administers two other programs of special classes for handicapped children which are covered in this report -- albeit briefly -- because of the particular relevance to programming for the emotionally handicapped: classes for children with minimal neurological dysfunction and classes for children with retarded mental development.

CLASSES FOR BRAIN-INJURED CHILDREN (Health Conservation 30 (HC 30) Classes)1)

Under the Board of Education's system of serving handicapped children on a narrow categorical basis, children whose primary diagnosis is minimal brain dysfunction and who require special class placement are served in classes for the brain-injured.2) The children in these classes, as described by Board personnel are generally hyperactive, have impairments in perception, and have such characteristics as disorganization, short attention span, logical sequence confusion, poor body image, spatial disorientation, distractability3) in varying degrees and combinations. These classes are not available for children who are doubly handicapped by also being emotionally disturbed, mentally retarded or having other handicapping conditions.* Children whose neurological impairment causes serious physiological or sensory handicaps, or seizures, are placed in separate health classes or programs. Personnel administering the brain-injured classes stated that in fact many, if not most, of the pupils in HC 30 classes have secondary emotional difficulties resulting from their experience with frustration in learning. There are 2,885 children in this program.4)

As part of its reorganization, the Division for Special Education anticipates establishing a Bureau for the Neurologically Impaired to administer all programs for the brain-injured. The brain-injured classes have been run by the Bureau for the Physically Handicapped, which may be one reason there has been a lack of orientation toward the emotional difficulties of the children involved. The brain-injured program, started with one class in 1955, has expanded in recent years and presently serves nearly 3,000 pupils. That expansion, in part, is related to the growing recognition and acceptance of the need for special education for neurologically impaired children,5) but it is mostly a direct result of the efforts of the New York Chapter of the National Association for Brain-Injured Children (NYABIC) (an organization of about 5,000 parents of such children) and of the Riley Reid case. The named plaintiffs in that suit were all brain-injured children, and the case, which had been in litigation since 1970, created pressure to open brain-injured classes even before the final wide-reaching order was issued in November, 1973.6)

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*Recently a pilot number of classes for the brain-injured and emotionally handicapped have been opened and are currently run by the Evaluation and Placement Units, see Sec. IV, Chap. 1.

Placements in brain-injured classes are screened by the Evaluation and Placement Units[7] (at least until the present augmentation of that service there were waiting period delays of six months or more). The diagnosis must indicate presence of organic brain dysfunction, but may be based on neurological or psychological data, not necessarily physiological abnormality.[8] E&P provides what is described as an inter-disciplinary comprehensive evaluation, which may include studying the child in the classroom situation for several days.

Most of the children served are at the elementary level,[9] because it has been thought that most children outgrow these problems by adolescence (although they may have developed secondary learning or emotional difficulties in the interim, or, if they have not been in a suitable program, be severely academically retarded). The goal of the classes is to return most children to the mainstream. It has been found that there is a need for programs at the older age level, and this year (1973/74) a high school for brain-injured pupils was opened, designed to provide an occupational training program.*

The pupil population of HC 30 classes is made up mainly of boys, reflecting a generally acknowledged predominance of boys with this particular handicapping condition.** No data was available as to the ethnic or economic level of the pupils served in the public school classes for the brain-injured.[10] Among Board personnel interviewed, some suggested that the classes generally reflected the population of the overall school population; others estimated that there was a disproportionate number of minority and poor children, because these children's families were unable to use private resources.

The classes are set up along the usual Board of Education class model, centers with two to four classes located in regular school settings serving children primarily within the district. Door-to-door transportation is provided. There are seven children in a class, with an extra teacher for every two classes; no para-professionals are available. The teachers are required to be licensed by the City as Teachers of the Physically Handicapped; however, that license qualification is described as being outdated in terms of these classes, since there are no academic or experience requirements in teaching the neurologically impaired.

The program provides a highly structured situation and provides an individualized program based on the child's specific perceptual and learning disorders, although the personnel teaching in classes reported that the prescriptions provided by E&P were of limited usefulness, particularly since there was usually no continuing relationship with the E&P personnel. Some personnel administering HC 30 classes stated that those children were best served in a specialized program which provided a highly controlled non-stimulating environment, whereas children primarily emotionally handicapped might need a great degree of stimulation. Many schools in the private sector, on the other hand, handle both emotionally handicapped and brain-injured children, in the same program, while allowing some flexibility for the particular individual needs of the child.

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*The program, designated P.S. 751, serves adolescents ages 14-21. The program was started in a building which was formerly a Special Day School for Socially Maladjusted & Emotionally Handicapped Children; the Special Day School was transferred to a new building because the facility was old and inefficient.

**Educators running both public and private programs reported a predominance of boys having the handicap of neurological impairment.

Specialized materials are used, with group lessons in some areas. Because speech difficulties are common, most classes have the services of a speech therapist on a part-time basis. Most classes are self-contained, but in some schools, children that are able to do so participate in the regular programming for part of the day.*

Except for speech therapy, the classes lack needed ancillary services. No clinical services at all are available. There are two guidance counselors serving all classes for the brain-injured. Otherwise, the classes are dependent on the already over-burdened auxiliary services in the regular schools and districts.11) The lack of auxiliary mental health services (and of paraprofessionals in the classroom) is one reason why the classes do not accept or serve children with difficult behavior (the classes do include pupils who were disruptive and hyperactive in the regular school situation, but who do not continue this behavior once in the appropriate special setting). However, many children in the classes do have emotional problems. On occasion E&P Unit clinicians have had to become involved in following through with pupils.

Although the establishment of the Bureau for the Neurologically Impaired is a continuation of the narrow categorical type of programming (which in fact excludes many children), it should at least overcome the limited "physical" handicap orientation which currently predominates. For instance, it is only recently that the Bureau for the Physically Handicapped saw the need for ancillary mental health services. (It has not yet obtained such services.) As the program expands to serve those children excluded from school (undoubtably those whose problems were most difficult)** and children whose parents were unable to find other solutions for them (for instance in the private sector), it is clear that administering a strictly instructional classroom program, however good, will not be adequate.

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*No figures were available on program cost.

**For instance, one of the plaintiffs in the Reid case was placed in a brain-injured class during the course of the litigation; subsequent to the decision he was excluded from class because of disruptive behavior. As of this date, because of the intervention of his counsel, he is being maintained on some basis in the brain-injured class, but no fully suitable program is yet available. Many other similar children continue to be excluded.

CLASSES FOR THE MENTALLY RETARDED (CRMD)12)

The Board Of Education's program for children with retarded mental development is the largest of the special class programs currently administered by the Division for Special Education.13) The total program, which is run by a separate bureau, The Bureau for Children with Retarded Mental Development (BCRMD), serves some 14,000 pupils in about 1,200 classes in 340 schools.14) Unlike many of the programs described in this report, the CRMD program has long been established. The first classes for the mentally retarded were established in New York City in 1900.15) Although, at least in theory, the program does not enroll children who are emotionally handicapped*, the CRMD program is pertinent to an examination of services for emotionally handicapped children because of several factors: 1) a significant percentage (7.3%) of the children in CRMD classes are emotionally disturbed according to the Bureau's own calculations (about 1,000 children)16); 2) some of the children enrolled in the classes function as retarded not because of any inherent mental deficiency, but because of emotional difficulties (such inappropriate placements occur most often with poor minority group children)17); and 3) the child who is recognized as having a multiple handicap (such as both emotionally handicapped and mentally retarded) is currently excluded from most Board programs run either for CRMD children or for emotionally handicapped children, leaving such children with virtually no resources in the public sector.

The Bureau runs several types of programs for children with differing degrees of mental deficiency: educable classes (for children with an intelligence quotient between 50 and 75); trainable classes (for children with an intelligence quotient lower than 50); and classes for a small number of profoundly retarded.18) At the age of 16 some children are able to enter special high school programs19) others are enrolled in Occupational Training Programs geared for low-skill employment or sheltered work shops.20)

The goal of the CRMD program as described in Board of Education literature is to "produce self-controlled, self-supporting citizens who can be productive members of society."21)

Children are placed in the program through the Bureau of Child Guidance on the basis of an examination which must include an individual psychological examination (data provided by outside agencies may be used).22) There are recognized difficulties in evaluating Spanish language children, because of the lack of Spanish-speaking clinicians.23) Although the Bureau takes the official position that parental consent is not required for placement in a CRMD class, in fact such placements are normally agreed to.24) Where a parent does object, it is usually at the evaluation stage. The service available has been limited. For this reason alone there would be a tendency, except in an extreme case, not to press the family that objected.

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*BCRMD does have a few pilot classes for emotionally handicapped-retarded children, and one cluster of classes for socially maladjusted-retarded children.

The ethnic make-up of the CRMD population is approximately 43.9% Black, 30.6% Hispanic, 24.7% white and 0.8% other minority, a Black and Hispanic population that is 11.5 percentage points higher than that of the regular school population (Black population 7.8 percentage points higher, Hispanic population 3.7 percentage points higher).[25] A majority of the pupils are boys (about 60%).[26] The Director of BCRMD, Madeline Dalton, attributes that fact to the tendency of teachers to refer acting-out disruptive children, rather than to seek out children who may have learning difficulties but who do not bother others. However, Mrs. Dalton suggested that it was unlikely that children who were not in fact retarded were "dumped" into the program. Her view was that the bias, in fact, was toward keeping children out of such classes. She pointed out that the CRMD population only comprises 1.1% of the general school population -- less than the normally estimated prevalence rate of 2.3%.[27] On the other hand, as a result of a recent re-evaluation of all CRMD children under its jurisdiction one BCG District Office found that 14 (and 14%) of the children re-evaluated in one of the community districts were not in fact retarded and should be returned to regular classes; these children were almost all black and from a deprived area of the district (District 21, Brooklyn).

The size of classes for the retarded follows requirements mandated by the **State Commissioner's Regulations.** Educable classes have a maximum of 15 in a class at the elementary level, 18 in a class at the junior high and high school level. Classes for the trainable and profoundly retarded have about 10 children in a class.[28] There is only one teacher per class, with no extra cluster teacher, such as is provided for most other special education classes run by the Board. There is no para-professional assistance, unless the district or school itself chooses to provide such help.[29] The teachers are all certified by the city and state as teachers of the mentally retarded.[30] Children are normally served on a district basis, although sometimes district lines are crossed. Transportation is provided for younger children; for high school age children travel training on public transportation is part of the educational program.

Except for the required evaluation prior to placement, the classes are not provided with any mental health back-up services. Only six guidance counselors serve the entire CRMD program; the counselors' function is to aid counselors within the districts with CRMD problems. Thus, for ancillary services the classes are dependent on the already over-burdened district and local school personnel.[31] There are several larger CRMD clusters with special speech services, for children with particular language and speech problems. No per-pupil cost estimates are available for the CRMD program, though it is evident from the class size and degree of service available that this is one of the least expensive of the special programs.

BCRMD has set up a computerized data bank which in addition to generating statistical data on categories of children served by their programs, also provides a method of keeping track of and following through on an individual child's educational program. Such records are kept until a child becomes 25, and presumably could provide data on effectiveness of the program in terms of the student's life adjustment at that age.[32]

It is beyond the scope of this report to evaluate on any level the effectiveness or appropriateness of the public sector CRMD program for children who are mentally handicapped. However, it is clear that many of the children who are involved in the program have complex problems including emotional handicaps, and that the program as presently functioning is not provided with the services necessary to handle the individual needs of such children. It is even more evident that for the child who is function-retarded because of emotional or other handicap, a limited goal program, lacking appropriate services, is clearly unsuitable.

Endnotes

[1] The classes for the brain-injured have been administered by the Bureau for the Education of the Physically Handicapped (BEPH), although it is now planned that a separate Bureau for the Neurologically Impaired will be set up. Material in this section is based on interviews with and data provided by: Marcus Arnold, Director of BEPH; Dr. Meyer Lieman, Assistant Director of BEPH; and George Cohen, Queens Supervisor of classes for the physically handicapped; on-site observation of a cluster of classes for the brain-injured located at P.S. 111 Queens; also Board of Education of the City of New York, Bureau of Curriculum Development, "Education of the Physically Handicapped," 1971, pp. 35-47.

[2] For a discussion of programs for children with "learning disabilities," most of which are administered by decentralized districts, see Sec. IV, Chap. 5.

[3] "Education of the Physically Handicapped," pp. 37-41.

[4] Survey as of April 24, 1974, information provided by Mr. Lawrence Bickell, Division of Special Education. According to the survey, there are 2,113 children in elementary level classes, 608 in junior high classes, and 164 in high school classes.

[5] Samuel A. Kirk, *Educating Exceptional Children*, (Boston: Houghton Mifflin Co., 1972), pp. 349-88.

[6] The *Reid* case was initiated as a complaint with different named plaintiffs under the civil rights act in federal court; at that time the plaintiffs alleged that only approximately 745 children were being served in classes for the brain-injured (*McMillan v. Board of Education of the State of New York*, 430 F. 2d 1145 (2nd Cir. 1970) at p. 1145), the 2nd circuit eventually abstained in the case (*Reid v. Board of Education of the City of New York*, 453 Fed. 2d (2nd Cir., 1971)) and the administrative proceeding which resulted in the Commissioner's Order was initiated.

[7] Murray Plescow, Administrative Director of E&P.

Endnotes

[8] "Education of the Physically Handicapped," p. 36.

[9] See Endnote 3.

[10] The only relevant ethnic data available is a Division of Special Education census of all classes for the physically handicapped, not broken down into type of class. Latest data available was as of 1972/73 (no date given), of 3,974 children then served shows 1,657 Black (41.7%), 799 Hispanic (20.1%) and 1,518 non-minority (38.2%). A city-wide census as of Oct. 31, 1972 shows 5,507 children, 32.4% Black, 29.9% Hispanic, 36.7% non-minority, and .9% other minority (obtained from computer printout, Office of Educational Research, Board of Education).

[11] See Sec. IV, Chap. 5.

[12] The material on CRMD classes was obtained principally from an interview with Madeline Dalton, Acting Director of the Bureau for Children with Retarded Mental Development (BCRMD), and on-site observations of CRMD classes for the Educable Retarded at P.S. 321B, District 15.

[13] New York State Law specifically requires districts to provide Special Classes for school age mentally handicapped children. See N.Y. Educ. Law Secs. 4401 (1), 4404 and 4406; and Regulations of the Commissioner of Education, Sec. 200.1 et seq.

[14] City School District of New York, "New Developments for CRMD," Learning in New York, April, 1974, p. 10.

[15] Edward Hoffman, The Treatment of Deviance By The Education System, Conceptual Project in Child Variance (Ann Arbor: University of Michigan, 1972), p. 24.

Endnotes

[16] According to a BCRMD Data Bank Survey, March 3, 1973. Of 13,419 children participating in the CRMD program, teachers estimated that 7.32%, or 983 children were emotionally handicapped.

[17] The question of misclassification of disadvantaged minority children as retarded is in general beyond the scope of this report. However, according to the data bank survey about 1,800 or 13% of CRMD children have IQ levels of 70 and above, the borderline area in which there is greatest likelihood of an improper evaluation as retarded. For discussions of the issue of improper classification of poor and minority children as retarded, see, among others, *The Six-Hour Retarded Child*, President's Committee on Mental Retardation (U.S. Government Printing Office 0-381-543); *A Very Special Child*, President's Committee on Mental Retardation; L.M. Dunn, "Special Education for the Mildly Retarded - Is Much of It Justifiable?", *Exceptional Children*, 1968, p. 5. For a different view see Oliver P. Kolstoe, "Programs for the Mildly Retarded, A Reply to the Critics," *Exceptional Children*, September 1972, p. 51; also see Gary W. Hammons, "Educating the Mildly Retarded: A Review", *Exceptional Children*, March 1972, p. 565. There have been a series of successful suits brought on behalf of minority group children both Black and Hispanic challenging placements in classes for the retarded on grounds of the ethnic disparity of the population of the classes and lack of validity in the I.Q. testing process: see *Larry P. v. Riles* 343 F. Supp. 1306 (N.D. Cal. 1972); *Guadalupe Org. v. Tempe Elementary School District* Civ. No. 71-435 (D. Arizona, Jan. 24, 1972) (consent decree); *Diana v. State Board of Education* C-70, 37 R.F.P. (N.D. Cal. Jan. 7, 1970, June 18, 1973) (Consent decrees); see also *Copeland v. School Board of City of Portsmouth, Va.*, 464 F. 2d 932 (4th Cir. 1972); the California Education Code Sec. 6902 now provides certain safeguards to prevent improper classification of minority students in classes for the retarded. BCRMD has set up pilot programs with the aim of bringing functionally retarded children back into the mainstream. One such program is Operation Step-up, operating in District 18. This program, using intense services (clinicians and paraprofessionals) aims at improving academic functioning and is financed under federal funds (Title I ESEA).

[18] According to the latest Division for Special Education Census, April 24, 1974, some 9,500 children are in the educable classes, some 1,800 children in the trainable classes, and 168 children in classes for the profoundly retarded. In the case of profoundly retarded, BCRMD has taken over programs formerly run by a voluntary agency -- the Association for the Help of Retarded Children (AHRC). These children were previously considered ineducable. This is another example of an area in which the private sector has led the public system.

[19] To enter a high school CRMD program, a student must read at 3rd grade level.

Endnotes

[20] Ms. Dalton feels that there is still a real need for programming for severely retarded older children who are able to participate in the high school or OTC programs.

[21] "New Developments for CRMD." For other Board of Education literature on the CRMD program see Board of Education, Bureau for CRMD, "Our High School Program, A Guide for Parents," (undated).

[22] According to both Ms. Dalton and BCG personnel interviewed, IQ scores are not the determining factor. The child's social adjustment is considered as well as the relation of his score to that of the population of his regular school (where school average is lower than the normal average). Under State Regulations "(a)n individually administered intelligence examination is . . . required," however, "(s)uch a test does not alone and of itself constitute an individual psychological examination" (Regulations of the Commissioner of Education, Sec. 200.3 (b)(3)).

[23] Ms. Dalton reports that only one Spanish-speaking psychologist is working for BCG and is employed in the Bronx. However, we contacted an additional Spanish-speaking psychologist working in the Brooklyn center.

[24] According to BCG personnel.

[25] **The 1972/73 ethnic census (undated) provided by Donald Eisenberg, Division of Special Education. The Black percentage in the regular public school population in 1972/73 was 36.1%, the Hispanic 26.9% (Annual Census of School Population, Oct. 31, 1972).** According to an ethnic census, October 31, 1972, of 12,794 children, 43.9% were Black, 30.6% Hispanic, 0.4% other minority, and 25% other. The most relevant ethnic figures, however, in terms of determining minority disparity would be of educable population, or the borderline population, since these are the areas in which there is serious question as to validity of the retarded classification. According to Ms. Dalton, because the Bureau recognizes that they serve a large number of Hispanic children they have tried to provide some special services on a limited basis. Two programs attempted were the use of three itinerant Spanish-speaking teachers in nine of the districts with the highest Hispanic population, and one pilot class where the teacher teaches part of the day in Spanish.

Endnotes

[26] BCRMD Data Bank Survey.

[27] U.S. Office of Education, HEW, Bureau of Education of the Handicapped, "Estimated Number of Handicapped Children in the United States (1971/72)."

[28] Regulations of the Commissioner of Education, Sec. 200.3 (b)(3). Division of Special Education, "Report on Special Education Classes Compared with State Standards on Class Size," 5/24/74, indicates that for Educable Classes there is an average at the elementary level of 12, Junior High 14, High School 17; for Trainable Classes an average of 11, and for Profoundly Retarded 9.

[29] There has been a pilot program in Districts 1 and 2 (Manhattan) using 16 para-professionals working under the direction of a social worker to fulfill the out-reach role for CRMD children and their families (Project Out-reach, funded under Title VI - Federal Aid to the Handicapped).

[30] Regulations of the Commissioner of Education, Sec. 200.3 (b)(3).

[31] See Sec. III, Chap. 3.

[32] "New Developments for CRMD."

DISTRICT PROGRAMS [1]

Although in theory the Central Board of Education has been responsible for the education of emotionally handicapped children as part of its responsibility for the education of all handicapped children,[2] in practice at least some of the community school districts have become involved in running some special programs which serve emotionally disturbed and similarly handicapped pupils.[3] Because the children, in the first instance, are within the regular schools, it is the schools and local districts which are first aware of their needs. And in the area of education of emotionally handicapped, which has been the area of greatest gap in service, responding to the need, some districts created their own programs, usually on a pilot basis. Frequently the primary stimulus to setting up such programs was the disruption which emotionally handicapped children cause when still part of the regular school setting. In some districts there was also an expressed desire to keep children out of formal special education programs where they would be labelled and stigmatized as handicapped. This was particularly the case in regard to keeping students out of the Special Day Schools. Some districts with a policy of avoiding suspensions have provided alternative resources within the schools for that purpose.

The Riley Reid order and the resultant expansion of services for the emotionally handicapped will substantially affect these programs. The Division of Special Education has already taken over some district programs. Inexplicably, however, no office at the Central Board has collated data nor was able to provide information on the various district-run services which provide special education, although these programs should be part of the total special education resources of the city.[4] The Board has not given any consideration to providing districts with special funding to administer special programs themselves, even where the classes are already operating. The assumption has been that all expansion of programs for the handicapped must necessarily take place through the Division of Special Education.

Because there was no city-wide data available, the observations on district-run programs are necessarily limited. On the basis of interviews with appropriate district personnel in five diverse community school districts, this report describes typical special programs which we found to be serving children who clearly could be classified as educationally handicapped because of emotional disturbance. The students in most of the programs were not in fact certified as handicapped* even though the Commissioner's Regulations require that all handicapped children be diagnosed and evaluated.[5]

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*This lack of certification results in children not receiving door-to-door transportation. This has been a problem for some programs trying to serve young children on a district-wide basis. One guidance supervisor said that she did not wish to see the children certified as emotionally handicapped by BCG because this would become a permanent record for the child. However, she said that she supervised placement of all the children in the program (a district-run Junior Guidance Program) and tried to arrange outside clinical treatment for them.

Our interviews with personnel involved in the programs, as well as our observations, indicated that the range of emotional disturbance of students in those special district classes was similar to that in the centrally run special classes for the emotionally disturbed (as reported to us, some programs included psychotic and highly disturbed children).

There was division among district personnel as to whether parental permission was a prerequisite for such special class placement, particularly when the program was part of the child's home school's organization.6) However, in fact most children were placed in programs with parental agreement, and it was suggested that without that cooperation the placement would not be worthwhile.

The district programs, with minor exceptions, serve both boys and girls. However, as is true of the central programs, there is considerable pressure to place acting-out boys, and thus boys form the majority of children in most programs. It was not possible to obtain meaningful data on ethnic distribution of pupils in the district programs, since the programs observed were not an adequate sample in this regard, and some personnel were either unable or unwilling to provide us with ethnic data.* In some programs we observed, the population of the district special classes mirrored the minority distribution of the school or population served, whereas in other programs there appeared to be disproportionate numbers of minority group children.** According to personnel interviewed, the overwhelming number of children in the district classes are from economically deprived families. This is reflected in the fact that most of the programs are funded through categorical aid programs directed at poverty populations.

The district special education programs usually are dependent on categorical aid funding programs for the disadvantaged, either federal funding through Title I ESEA, or state funding through Urban Aid to Education Funds which are allocated to the districts on a formula basis. In some cases, programs were squeezed out of their normal personnel allotment by the district or school involved, and in some instances other special funding sources were used (such as an unexpected return or an allotment of funds from the Central Board).

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*Some other personnel, however, were willing to give us exact ethnic data and were open in providing all information.

**For instance, in one district Junior Guidance Class we observed, of 54 children in the unit, approximately one-third each was Black, Hispanic and white, whereas the overall population of the school in which it was located and from which naturally all the children were referred was 80% white and 20% minority; in another district we observed a Junior Guidance Program which served two schools, where the combined population was about 50% Hispanic, about 30% Black and 20% white. The guidance classes had a similar ethnic make-up.

The following represents a description of prototype district programs which were either observed directly or reported in detail by the respective districts. Our description necessarily is a consolidation. Some programs contain features which are not fully described. Our report is intended to be illustrative of the kind of services which have been operating in the districts.7)

PROGRAMS ORGANIZED FOR CHILDREN WITH BEHAVIOR PROBLEMS

District Junior Guidance Classes8)

These are classes similar to the Central Junior Guidance Classes in organization, class size, and service provided (although usually there is even less service available).9) Children are generally referred because of acting-out and difficult behavior and are normally not required to be certified as emotionally handicapped by BCG. Both district and individual schools have organized such classes. The classes observed were financed by squeezing out positions from regular personnel allotments. Even within one district, classes vary with the atmosphere of the school and with the objectives of the particular personnel in charge of the program.* Since the Reid case these programs have largely been absorbed by the Division of Special Education, and will now be run as centralized programs. In general, with the level of services available, these programs have the same limitations as the central "B Centers" and are behavior-control situations with very little possibility of effecting academic remediation or providing a therapeutic environment.

Street Academy Type Classes10)

The academy classes are patterned after privately run, alternate school, street academies and are usually located outside the school-proper in store fronts, churches, or sometimes annexes. The academies usually serve junior high school age pupils who have been behavior problems, disruptive, or serious truants, some of whom would otherwise be suspended. Sometimes children are self-referred. The classes are ungraded, with favorable teacher-student ratios ranging from 1:6 to 1:10. Para-professionals are used to varying degrees. The programs emphasize remediation and group dynamics such as "rap" sessions. It is hoped that by keeping the student in the less pressured, out-of-school setting for a limited time (normally the children are supposed to return to the regular school after a maximum of a year), that in this favorable atmosphere the student will attain a better self-image and attitude towards school. However, there were no personnel provided to follow through with the student when he does return to school.

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*As an example, in one district standardized tests were administered to the children in these classes; in another district, they were not.

The students in these classes are not considered to be handicapped or emotionally disturbed. However, according to personnel interviewed, many disturbed children undoubtedly find their way into these programs. Normally no special mental health services are available (although there may be limited extra guidance support). In one program we observed, under the terms of its Urban Aid grant, the classes were specifically not permitted to include "emotionally handicapped" children. However, personnel who had worked in this program informed us that some of the students were in fact deeply disturbed. The same program, by its grant terms, required that each child be given comprehensive examination, including psychological and scholastic aptitude evaluation prior to placement. In actual practice, this was not done.

These programs depend totally on the ability of the particular teacher in charge. The programs observed ran the gamut from reasonable settings for remediation and behavior control, to chaotic, carelessly run, and even one seemingly dangerous setting. Some of the out-of-school and annex settings we observed were depressing (it should be noted that some regular schools themselves are also physically inadequate).

These classes are the latest response to the difficult problem of the hard-to-handle junior high school level student. There has been a history of such classes, including "citizenship classes" and "career guidance" classes. Some of these programs have included a half-day-combined-with-work program or a vocational program. These programs have phased in and out with changes in educational theory, community educational vogue, funding sources, and reorganization of the school system.

Interim Classes 11)

Interim classes are similar to the academy classes in providing a favorable pupil-personnel ratio in a short-term program which is directed to returning a child to the regular school. However, these classes are usually located within a school, are for younger children, and serve children more intensively on a rapid turn-over basis (several months). The concept, again, is that a period of ego building and a favorable school experience can re-direct the child from this prior negative pattern. Normally the child is returned to a new regular school. The desire to serve many children on a short-term basis is understandable in view of the need and problems within the district. However, as with most short-term programs (see discussion of Transitional Classes, Sec IV, Chapt. 1), this objective may be unrealistic, and the teachers may be under pressure to return the child to school too precipitously. Typically, there is little provision for a needed follow-through with the child in a regular school.

Truncated Day

Although the truncated or short day was not described as a "program" by district personnel, our own observations indicate that many children spend periods of their school year on this limited educational basis. Furthermore, we observed children being sustained in school only by spending part or most of their day in the guidance office,* or somewhere else out of the regular class. Clearly this was a desperation measure by the school because there was no suitable program available.

LEARNING DISABILITIES PROGRAMS12)

In addition to programming for children with socially disruptive behavior, some of the districts have set-up programs for children with "learning disabilities" or "perceptual handicaps."13) This is another area in which the local districts have stepped in, because there has been an obvious gap in public services. Although the centralized school system has classes for brain-injured children, it has had no programs for children with specific learning disabilities who are not eligible for such classes, and no supportive programs for such children who do not require special class placement. The needs of the child with learning disabilities, who is neither clearly "normal" or "handicapped," illustrates the artificialty of drawing any such lines, and how the division between central and community responsibility in regard to special and regular education may result in serious deficiencies in service. For the coming year, the Board of Education has requested funds to initiate a city-wide learning disabilities program, which would provide for a program in one school in each community school district. With the severe city cut-back in funds for special education, however, it is problematical whether this program will be carried forth.14)

The district programs have typically been in elementary schools, for younger children, with the objective of avoiding future learning problems. In one district there was a kindergarten level program. Another district had one class for children with learning disabilities in one of its regular schools. The teacher had been trained in a community hospital clinic which specialized in that field, and she worked in continued cooperation with the clinic. Still another district had tried to deal with the learning disability problem on a broader basis, by using a reading diagnostician to determine the child's disability and then give the teacher a prescription to work with -- in some cases the children working with reading groups or para-professionals on a tutorial basis. Personnel in the district which had such a program, were divided on the actual helpfulness of the diagnosis. There was some feeling that the program was spread too thin to be useful.

Under the present system, where the districts get no special education funds and most of the personnel allotments are in effect mandated,15) it is only possible for the districts to run such programs on a pilot basis.*

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*Several guidance counselors interviewed had children simply sitting in their office during the entire interview. This was part of the child's regular day, because he could not be sustained in the class room situation.

DISTRICT USE OF PRIVATE SCHOOL RESOURCES

The districts varied widely on attempting to make use of the possibility of state tuition grants for the handicapped, or placing children in suitable private schools. Such placement clearly depends primarily on the initiative of the child's family, and there was a marked difference between districts serving middle-class children and districts serving the poor. Personnel in the poor communities, even where otherwise resourceful, rarely considered seeking private placement as an alternative for the children. Some stated that the parents could not afford the tuition; some that it was not proper for them to recommend private placement. Such personnel were also not aware of the possibility of obtaining total funding for special education placement through Section 232 of the Family Court Act or of the possibility of placing children in Day Treatment Centers.[16] On the other hand, the guidance personnel in middle-class, mostly white community districts were fully cognizant of the private school resources in their community for handicapped children and the systems for obtaining private tuition grants.

CONCLUSIONS AND RECOMMENDATIONS

The readiness of community boards to establish special education programs was not a result of the needs of the particular community, since the current level of services is so low that the need exists in all sectors of the city. Rather, it depended on such factors as the sensitivity of the particular district superintendent to special education needs, the ingenuity and resourcefulness of district personnel (such as the guidance coordinator), and the awareness and attitude of the community and the community board, including pressures to remove disruptive children from the regular classes.

District personnel interviewed were divided as to whether special education for the handicapped should be a central or a district responsibility. Some personnel expressed the view that the Central Board should continue to handle special education. Others felt that if the districts were mandated to provide programs and were provided with sufficient funds, the districts could run better programs (there would not be the continued split and fragmentation in authority).[17]

The authors believe that it is a serious ommission and error for the present expansion of special education services to be carried out with complete disregard to the programs and resources in the community school districts.

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*It is beyond the scope of this report to deal fully with the question of "learning disabilities." However, a note of caution should be added that there is a growing tendency to attribute all learning problems to such disabilities, and to see this as a new panacea. This is a particular danger when this leads to special class placements.

1) The division of Special Education, or another appropriate bureau, should make a comprehensive survey and assessment of district run special programs, to give a complete picture of the City's resources.

2) Where districts demonstrate both an ability and a willingness to run special education programs, they should be given the opportunity to do so, under firm guidelines established by the central authorities to protect the rights of the children involved and to guarantee the quality of the programs.

3) The authors suggest that decentralized administration of special education programs already being run by districts, or to be opened, would be in accord with the Decentralization Act. That Act (N.Y. Educ. Law Sec. 2590-h) provides that the Chancellor has "the power and the duty" to "control and operate" all special education programs conducted prior to the enactment of the Act (April 30, 1969). He has the power to operate new programs within a district, as he may determine, provided, however, that he consults the affected community board. We would suggest that Sec. 2590-h authorizes the Chancellor to administer new programs, but does not prohibit the Chancellor from authorizing districts to administer new special education programs themselves and even expansions of existing programs. A recent case, Matter of Dixon,[18] which affirmed the right of a community district to administer a program for preschool retarded children upholds this view. Of course any such special programs would have to be administered in accord with the statutes and regulations applying to handicapped children, as well as policies set down by the central authorities. (Educ. Law Sec. 2590-e).

4) There is the need for strong protective guidelines for handicapped children and children not diagnosed as handicapped who are placed in special class programs. Many of the district programs described in this section (such as the academy classes) will continue even if there is an expansion of special education services for the emotionally handicapped at the central level exclusively. These programs should include the same due process placement procedures which apply to centrally administered programs. Further, there should be central monitoring of the quality of programs to determine that they provide at least an equivalent educational experience to the regular school program, and also provide appropriate services to justify the special placement.

Endnotes

[1] The information in this section is based on interviews with personnel in six of the 31 community school districts (there are now 32 districts) and on field visits to district administered programs in five of those districts. The data and observations are, therefore, only suggestions of the type and number of district run programs. The districts covered varied in the ethnic, social, and economic make-up of the pupil population. The following chart presents a breakdown of included districts:

District #	Annual Census of School Population 10/31/72 Population (ethnic breakdown) NYC BE (Dec. 1973)					# Title I schools (poverty level) as of June, 1974
	# of students	% Black	%Hispanic	% other minority	%non minority	
6, Manhattan	18,659	30.4	52.3	1.4	15.9	12
10, Bronx	28,598	24.0	33.6	3.1	40.3	17
15, Brooklyn	25,750	17.9	52.0	1.3	27.8	24
25, Queens	25,717	13.5	6.4	4.4	75.7	0
30, Queens	23,888	21.0	19.8	3.4	55.8	9

[2] N.Y. Educ. Law, Sec. 2590-h.

[3] The amount of special education service for emotionally handicapped children which the districts attempt to provide varies widely, see Chart A. A sixth district contacted, District 9, Bronx, reported that it ran no such programs.

[4] The authors requested such information from both the Division of Special Education (and its predecessor, OSEPPS), and from the Division of School District Affairs (and its predecessor the Office of Community School Boards).

[5] Regulations of the Commissioner of Education Section 200.1. See Sec. III Chap. 2.

[6] Parental permission is required for placement in most central programs for emotionally handicapped children. See Sec. III, Chap. 2 for a discussion of due process procedures in connection with the placement of students in special classes.

Endnotes

[7] For specific information on services provided in various district run programs, see Chart A.

[8] District Junior Guidance classes at three locations were observed: P.S. 321, and the District Office (not a regular school) in District 15, Brooklyn, and P.S. 122, District 30, Queens.

[9] See Sec. IV, Chap. 1.

[10] Street Academy type classes were observed at four locations: I.S. 88 Annex, and JHS 136 (in a church) District 15, Brooklyn; two off-school locations in District 6, Manhattan; some off-school sites and classes were described by the District Guidance Coordinator in District 10, Bronx.

[11] An Interim Class was observed at P.S. 76, District 30, Queens, and at the District Office of District 10, Bronx. A junior high class was being planned in District 25, Queens.

[12] Personnel in four districts, District 15, Brooklyn, District 10, Bronx, Districts 25 and 30, Queens described learning disabilities classes of various types which are administered by their districts.

[13] "Learning disabilities" is an area in which there is disagreement on definition, and prevalance of the handicap. As defined in the Learning Disabilities Act of 1969, [Title VI ESEA Amendments of 1969 (P.L. 91-230), Part A, Sec.602], children with such disabilities are "those children who have a disorder in one or more of the basic psychological processes involved in understamding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicap, brain-injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental disadvantage."

For definitions which distinguish between neurological impairment and learning disabilities see Regents of the University of the State of New York, The Education of Children with Handicapping Conditions, SED, 1973, p. 9; Fleischmann Report Vol. II, p. 9.43; generally see Samuel A. Kirk, Educating Exceptional Children, (Boston: Houghton-Mifflin Co., 1972), Chap. 2.

Endnotes

[14] This program was not in the original Chancellor's budget and was added to the projected Special Education budget by the Board of Education, principally at the behest of Dr. Seymour Lachman, then President of the Board (now resigned) and was budgeted at nearly 1.3 million dollars.

[15] Most of the districts' alloted tax levy monies are taken up with pre-determined personnel costs (required under the centrally negotiated union contracts) and other mandated costs.

[16] See Sec. V.

[17] This section has been confined to a discussion of district programs which serve emotionally handicapped and similarly handicapped children, and does not deal with other types of district special education programs. However, one district visited, District 15 in Brooklyn, runs a pre-school program for retarded (Down's Syndrome) children -- another area where there have been little or no public services.

[18] Matter of Dixon, H-8739/73 (Fam. Ct. Kings).

SERVICES FOR HIGH SCHOOL AGE EMOTIONALLY HANDICAPPED STUDENTS(1)

High school age students with educationally incapacitating emotional problems are virtually unserviced under the present system. There are an estimated 6,000 emotionally handicapped secondary school pupils in New York City in need of some level of special services.(2) Currently the Board of Education provides special education day programs for a total of less than 700 emotionally handicapped students; 600 in the Special Day Schools for the Socially Maladjusted and Emotionally Disturbed, and less than 100 in various pilot programs.(3)

In his Reid Order the Commissioner specifically recognized the insufficiency of service to handicapped children in the high schools. He required the Board to undertake a study of the needs of the handicapped on the secondary level and required the Board to submit to him a plan to meet the needs of such children. In its "Plan in Response to Reid" the Board itself admitted that it would be unable, even with maximum projected expansion for 1974/75, to provide for an estimated 5,000 emotionally disturbed high school students.(4) Board personnel have recently made a survey of identified high school students in need of immediate placement in special programs for the emotionally handicapped. A waiting list of 2,179 was compiled. Of this list, 675 were students on home instruction.(5)

The failure of the Board to provide special education programs for high school age students is compounded by the lack of supportive services in the secondary schools. The ratio of mental health services is one clinician to 5,000 students, the ratio of attendance service is one attendance teacher for every 3,000 pupils and the guidance service ratio is one counselor for every 1,200 students.(6)

Additionally the typical impersonal institutional New York City public high school is a particularly difficult and even provocative situation for a disturbed youngster. The academic-comprehensive high schools which serve the overwhelming number of public high school students have registers running between 2,500 to 6,000 pupils.(7) Most of the academic high schools are on double and even triple session, with some schools operating at 175% of capacity.(8) The rigidity and alienation present in New York City high schools has been described in other studies(9) as well as the high incidence of chaos, disruption,(10) and drug use.(11)

In the face of intolerably overcrowded schools, unsuccessful students,(12) and lack of appropriate services, the system's primary response to these multiple problems has been to work toward early discharge or other methods of exclusion of the students who present problems, including emotionally handicapped students.

In the year 1972/73, 28,997 students were discharged from high school as being over 17,(13) and another 2,783 were discharged as having received employment certificates.(14) In that same year 53,719 were discharged as graduates.(15)

According to the Fleischmann Report only 55% of the New York City students who entered public secondary schools in 1965 remained to graduate (a significantly lower percentage than the 74% for the state as a whole).[16] The statistics in the Fleischmann Report relating specifically to minority group students are even more disturbing. Only 51.1% of Black students and 44.8% of Hispanic students who entered ninth grade in New York City in 1967 were still enrolled four years later, as compared to 76.1% of "other" students.[17] A recent report on graduate-percentage as a measure of high school productivity determined that, for the class of 1973, at 57 of the City's academic public high schools only 61.23% of enrollees actually graduated.[18]

Systematic exclusion is also demonstrated by the toleration of a high degree of truancy from the high schools. The Bureau of Attendance feels that 20,000 high school truants are written off by the school system each year.[19] The average daily attendance in the high schools in 1972/73 was 74.25% -- nearly 10% less than the average for the total school population -- with some schools reporting average attendance at less than 60%.[20] Furthermore, previously there was extensive and a disproportionate use of medical discharge at the high school level.[21] Between September and May of 1972/73, more than 1,500 high school students were medically discharged for some period of time, whereas only somewhat over 1,700 children were medically discharged from the elementary and intermediate schools, with a population which is nearly twice as large.[22]

The Board of Education does have a significant number of alternative programs, seemingly serving more than 6,000 adolescents and young children in alternative situations and another 3,000 at a given time in the short-term auxiliary services employment supplement program. These programs, although not designed as special education programs and lacking appropriate services, are frequently used as placements for students who have emotional problems, because no other resources are available.[23] Furthermore, there is a danger of these programs, which often have limited academic goals, becoming a ready dumping ground for students who cause difficulties in the schools, particularly minority or poor students.

PROGRAMS AVAILABLE

Special Day High Schools for Emotionally Handicapped and Socially Maladjusted Children

There are three Special Day High Schools for boys (two in Manhattan, one in Brooklyn) and two such high schools for girls (one in Manhattan, one in Brooklyn) serving a total of some 822 students.[24] There are no Special Day High School placements available in Queens or the Bronx, although approximately 40% of the students in Special Day High Schools are from those boroughs.[25]

Pupils may be placed in the boys Special Day Schools: 1) as a carry-over from the intermediate junior high school, although according to intermediate school principals and other Special Day School personnel interviewed, this process is followed only for truants and students considered too disturbed to have any possibility of functioning in regular high schools, 2) as a result of a "voluntary" transfer from a regular high school, or from junior high school ninth grade, or 3) as the result of a Superintendent's Suspension determination. Within the school system, including among personnel in the Special Day Schools, the high schools are seen as alternatives only for severely "acting-out" students with no other options.

The overwhelming percent of the students attending these schools are Black and Hispanic.[26] In fact as of October 1972, there were only 38 non-minority children attending the Special Day High Schools.[26a] The boys' high schools appear to be particularly unsuccessful, even as compared to the other Special Day Schools. The reported average daily attendance at each of the three schools in 1972/73 was P.S. 85 - 44%, P.S. 91 - 36%, and P.S. 58 - 42% (the attendance at the girls' schools was higher, P.S. 8M - 71.13%, P.S. 141 - 63%).

The reading grade statistics at the boys' high schools indicate a low level of academic achievement. In the 1972/73 school year the respective percentage of students who were retarded more than two years in reading were P.S. 85 -- 95.3%; P.S. 91 - 84.2%; P.S. 58 - 78.7%. The percentage of retardation of more than two years at P.S. 8M, the girls high school, was only 30.2%[27] Although the girls apparently do not have the most severe learning difficulties, it was generally agreed that the girls, who under present conditions are placed in the special schools, do present the most difficult behavior problems.*

The Special Day High Schools heavily emphasize industrial arts programs such as wood-shops and handcrafts (as does the entire special school program). However, in most cases, these programs do not offer industry level training appropriate to a terminal high school program such as would be the aim in the regular vocational schools. The vocational programs in the Special Day High Schools are not supervised by the Vocational High School Division, but are run by industrial arts supervisors who are licensed to supervise at the junior high school level. In recognition of this limitation, one school, the Sterling School, is attempting to raise the level of its shop program (particularly with their tailoring program). The Livingston School (P.S. 8M, the girls' high school) does offer a part-day work program (primarily office jobs) where the girls actually get paid, and has run an in-school store.

The Special Day High Schools are unable to issue diplomas officially on their own, a factor which clearly undercuts the possibility of their program providing an equivilent to the regular school academic program or any goal orientation which the student may have in attending the school. Instead, the student is supposed to return to the regular school for at least a term prior to graduating. Some Special High School principals are able through ingenuity and persuasion to arrange for a regular high school to issue the diploma, without the student actually returning to the regular school.[28] It is not known what percentage of special school students actually do graduate.

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*P.S. 8M was the only school visited where the authors observed unacceptable and uncontrolled behavior. The school has a policeman stationed full-time at the school. He told us that the two girls involved would "have to leave the school."

Special High School Classes for Emotionally Handicapped Children

The only program currently available are two classes located at two high schools (Susan Wagner on Staten Island, and Hillside High School in Queens) serving eight students each. This program is organized as a "resource room" which students attend on a part-time basis, with the aim of gradually re-introducing them into the mainstream of the school when possible. The Division of Special Education anticipates expanding the special class program next year (1974/75) to serve a total of 520 children, in units which would serve 20 children each (classes of ten each with one teacher to a class) at 25 different high schools.29) As of September 1974 these projected new classes had not opened as yet, reportedly because of a lack of clinical support services.*

Pilot Programs

Individualized Instruction for Emotionally Disturbed Children. A Resource Room program located at two city hospitals serving, on a short-term basis, out-patients who are unable to participate in normal classroom activities. The program has the capacity to serve some twenty 12-17 year olds at any one time. It has been funded by Federal Aid for Handicapped Children.30)

Transitional Class Program For High School Students - Evander Childs High School, in the Bronx for adolescents from that school or coming out of Bronx State Hospital. This program, scheduled to open in April 1974, will serve 8-16 students, and will operate on the transitional class model,31) but with leeway for the students to participate in regular classes when ready to do so.

Alternative Programs

As suggested above, the City Board does have a significant number of alternative high school programs for dropouts and unsuccessful high school students, which, although they are not designed as special education programs for the emotionally handicapped, do serve as a placement resource.32)

A) Auxiliary Services33)

The huge employment-oriented auxiliary services program which serves about 11,000 older adolescents yearly in an employment-oriented program is a frequent resource for students who have had school problems. The program serves clients of age 16 and above (90% are between 16 and 22), the overwhelming number of whom are unemployed school drop-outs. About one-third are referred through "exit interviews" when they are discharged from high school. Seventy percent of the population served is Black and Puerto Rican.34) The program includes five day centers capable of serving 750 clients and ten evening centers capable of serving 3,000 at one time.35)

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*As reported by Board of Education personnel to Miriam Thompson, Queens Lay Advocate.

The program is basically a counseling service with supportive remedial and job development components. Students usually attend two or three days or evenings a week. In 1971/72 only 7% of the total population served obtained high school equivalency diplomas.36) This low percentage should, however, be viewed in terms of the fact that a substantial percentage of the clients have reading levels of less than seventh grade level, and these are referred to a separate remedial program. Of clients who came to the agency unemployed (7,467) only 1,713 were eventually employed.37) No figures are available on the number of school leavers returning to regular educational programs.

Although the auxiliary services program lacks mental health back-up personnel and resources for dealing with serious learning problems, adolescents with learning and emotional problems are frequently referred to the program, because nothing else appropriate is available.

B) Mini-Schools38)

Mini-Schools are programs organized within the framework of a regular city public high school by the principal of that school. Thirty of the 100 city secondary schools have such programs, which serve a total of some 2,500 students with an average of 75 students enrolled in each Mini-School.* Normally only a student already attending a given high school would be placed in that school's mini-program. In contrast to the vastness and anonymity of the normal high school, the Mini-School is usually run as a self-contained unit. The programs in most cases have a limited remedial component. The teacher-pupil ratio is only slightly more favorable than that in the regular high school program. Typically no extra guidance or clinical service is available, although a few of the programs have para-professional workers to provide out-reach to the community (street-workers).

C) Satellite Schools

These are programs organized by the regular city high schools, but located in facilities outside of the schools although some schools have since become independent. There are about seven such programs** serving between 80 and

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*This overall figure, however, includes Mini-Schools designed for students with special talents and abilities, which would not accept or be resources for students with problems. In fact, the schools are designed to attract successful students and to offset racial imbalance. One high school, Haaren High School in Manhattan, is entirely broken down into 12 Mini-Schools.

**The central Board of Education did not have readily available information on these programs.

115 students. Some of these programs have an industry, career, or other work affiliation.*

D) Street Academies

The academies are described by the Board as small learning centers for students who have not been successful in regular schools, but who desire high school diplomas.[39] There are six such academies, typical enrollment is 100 (in addition, Harlem Prep with a potential enrollment of some 500 was absorbed by the City Board in 1973/74).

E) Independent Alternate High Schools (Pilot Experimental Schools)

These programs normally serve 16 year olds and over who have dropped out of high school. (Some of the schools may have different age ranges.) The programs have a high school equivalency objective (although according to personnel interviewed at one such school, for many, if not most of the students in need of extensive remediation with little academic background, this goal may be unrealistic). Students attend on a half-day basis. Several of the schools have an industry or occupational orientation. There are six such programs. Registers run from 200 to 500.

The one alternative high school program visited by the authors was such a pilot school, the Pacific-Alternative High School.** A description of Pacific's program will give at least an impression of the service available in alternative settings. When visited, the school had a population of 170 which was 70% Black, 28% Hispanic, and only 2% white (the school had a waiting list of 80 although it had just opened). The school had a teaching faculty of six, the 1:28 pupil-teacher ratio was similar to that of a regular high school. However, in the smaller informal setting there were closer teacher-student relationships. The school was broken down into six "families" each of which had a teacher as a group leader. The families conducted "rap sessions" twice weekly. Additionally the administration was working to maximize student self-governance, even to student-selection of new students. The school was serviced by a director, an assistant director, a guidance counselor, and a para-professional, providing a higher ratio of pupil personnel service than is available in the regular high school. Students attended on a one-half day basis, courses were given in six-week cycles, and no grades were given. Special written materials were used for the student to take courses which could not be available in such a small school. (However, some courses and vocational programs promised in the school's brochure were not in fact offered.)

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*The representative of one program contacted by telephone was precise in stating that they would not accept emotionally handicapped students.

**The school was visited in the fall of 1972. It has since moved to another location.

SUMMARY

Although the various alternative programs differ widely, most are characterized as being organized in smaller settings, where the faculty is familiar with the individual students. Although the programs may provide a reasonable alternative for a student who can profit from a small informal atmosphere, these schools are neither designed nor equipped to work with students with substantial emotional or learning difficulties.40)

RECOMMENDATIONS FOR HIGH SCHOOL PROGRAMS

Clearly there is currently a vacuum in educational services for emotionally handicapped, high school age students, and in programming for a transition from the self-contained and protected special education programs for younger children to the high school setting. Assuming that there will be an expansion of service in compliance with the Riley Reid Order, the authors suggest that the expansion should take place along the following lines.

Maximum integration of students is particularly necessary at the high school level,since isolatuion and stigmatization is unacceptable to, and destructive for the older students. Furthermore, it is difficult in small self-contained programs to provide the type of facilities necessary for a full high school program. A continuum of services should be available at the high school level including the following programs. (This model may also be appropriate for other types of handicapped students.)

1) A supportive program should be available for students who are able to participate in the mainstream of the high school, but who need the resources of tutorial service and individualization, and which would provide early intervention in crisis situations. This program would provide the student with a constant resource to turn to when he had difficulties. Such a program would be appropriate for most graduates of Special Day School intermediate schools, and graduates of centers for the moderately emotionally handicapped or classes for the brain-injured, as well as other students. There is no reason why such a program needs to be categorically organized around a specific type of handicapping condition.

2) Resource Rooms, and programs along the Central Board's model or Transitional Class model should be provided for students who are not ready or unable to participate in the regular program. These resources should take into consideration maximum participation in regular classes and extracurricular programs.

3) There should be Special High Schools for students in need of an intensive structured program. Far greater mental health and other services should be infused into these programs, in recognition of the fact that these students, in general, are the students with the most intensive problems, who have been rejected as too difficult by all other resources. (Realistically, many involved in these programs may need residential placement.)

4) Occupational and academic alternatives should be available in the Special High School Programs, emphasizing different areas so that a

program appropriate to the student's needs and interest can be selected. Such programs should provide academic and vocational goals equivalent to those of regular school instruction, and the schools should be able to issue their own diplomas.

5) Occupational Training Centers* for those students whose emotional handicap prevents them from meaningful participation in a regular academic program. Special safeguards are necessary so that these programs are not used inappropriately for students with greater potential.

6) Vocational high schools should also include programs along the models suggested in paragraphs 1) and 2), with appropriate supportive services and structures. These high schools should be able to service some students with emotional or other handicaps. Students with special talents, aptitudes, and interests should not be foreclosed from appropriate programs because of their special needs.

7) Appropriate health and other resources should be available to those students who are emotionally handicapped, or have other serious learning problems, and are participating in alternate programs.

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*The Division of Special Education has initiated such programs for brain-injured students and presently serves about 40, with the anticipation of expanding to 120 by the fall of 1974.

Endnotes

[1] The information in this chapter is derived in part from the following sources: interviews with Gloria Lee and Sidney Becker, Administrators of Special Education for the Emotionally Handicapped, and Donald Eisenberg, Division of Special Education; field interviews with personnel at two academic-comprehensive high schools, John Jay High School and John Dewey High School; Beatrice Bass, in charge of Mini-Schools for the High School Division; field interviews and observation of one alternate school, the Pacific-Alternative High School; field interviews and observation of two Special Day High Schools, P.S. 8M and P.S. 58, Manhattan; and the following written material, High School Profiles, 1972/73 Division of Systems Planning and Program Analysis, City School District, City of New York; Directory of the Public High Schools, New York City - 1973/74, Board of Education of the City of New York.

[2] Based on the H.E.W. prevalence estimate of 2% emotionally handicapped; for further explanation see Sec. II, Chap. 1.

[3] The Board of Education ("Plan in Response to Reid," Board of Education of the City of New York, Office of Special Education and Pupil Personnel Services, January 31, 1974) reports serving some 3,191 secondary school students (Plan Order #8-B, Summary Statistical Chart), 2,351 severely disturbed and 840 moderately disturbed. However, these figures include students participating in the Board of Education's programs located in residential institutes -- including correctional centers, homes for neglected and dependent children, psychiatric hospitals and residential treatment centers, as well as tutorial programs in narcotics centers and programs for pregnant girls. With the exception of the treatment centers ,the psychiatric hospitals, and some institutions for the neglected and dependent children, these are not bona fide special education programs. The Division of Special Education was unable to provide the courts with an explanation of how a distinction was made between moderately and severely disturbed children. The "Plan" further reports that an additional 576 students will be served in 1974/75.

[4] Ibid., #8. The Board also suggests that there are 5,000 learning disabled youngsters whose needs will not be met and that this handicapped population of 10,000 may be included among the truant population of those served in auxiliary high school facilities. Implementation for these two groups is targeted for September, 1975.

[5] "High School Waiting List," June 1974, prepared by the Division of Special Education at the request of a committee representing voluntary groups concerned with the lack of services for emotionally handicapped high school students.

Endnotes

[6] The insufficiency of supportive services in the City public school system is described above, Sec. III, Chap. 3.

[7] High School Profiles, pp. 6-139

[8] Ibid.

[9] Fleischmann Report, vol. II, p. 7.11.

[10] Ibid., p. 10.3

[11] Ibid., pp. 10.6-10.8

[12] Nearly 40% of students in attendance at the academic high schools are more than two years retarded in reading (High School Profiles, pp. 199-200).

[13] Permitted under the authority granted in the By-Laws of the Board of Education, Sec. 90 (3)(g) which permits a parent to withdraw a student over 17.

[14] By-Laws, Sec. 84.

[15] Data derived from Bureau of Attendance, Summary Discharge of Public School Pupils by Cause and School Level, 1972/73.

[16] Fleischmann Report, vol. I, p. 1.43, Table 1.18. On drop-out rates generally, see pp. 1.41-1.46.

Endnotes

[17] Ibid., p. 1.45, Table 1.19.

[18] Trever Cushman, Those Who Make It: A Preliminary Report on Possible Measure of High School Productivity, prepared for the Citizens Committee on Children (April, 1974), p. 5. The report shows a decline of percentage graduated from 63.31% for the class of 1970.

[19] For further discussion of the lack of attendance service in the school system see Sec. III, Chap. 3.

[20] Report on Pupil Attendance by School District or Centrally Controlled Group, 1972/73, Bureau of Attendance, Board of Education. Six high schools report average daily attendance of less than 60%.

[21] Medical discharge is now barred as a result of Matter of Reid, Dec. #8742 (November 26, 1973), p. 2.

[22] Derived from Bureau of Pupil Accounting, Bureau of Attendance, Summary Table, Medical Discharges, 1972/73. Similarly, from September to May 1972/73 there were 553 Superintendent Suspensions of high school students, only slighly less than the number of such suspensions (606) of younger children, although the lower school population is far larger (derived from Summary Superintendent's Suspensions, Sept. 1972 - May 1973).

[23] See Endnote 3.

[24] High School enrollment as reported by the Office of Special Schools as of period ending February 28, 1974.

[25] Derived from figures reported by the Office of Special Schools as of June 1, 1973.

Endnotes

[26] Derived from figures reported by the Office of Special Schools as of October 31, 1972. According to these figures the population of the Special Day High Schools is 95.8% Black and Hispanic.

[26a] Ibid.

[27] Joan D. Goldman, "Special Day Schools for Socially Maladjusted and Emotionally Disturbed Children, New York City," (mimeo) (Washington, D.C.: American Federation of Teachers, 1973) p. 14 (referred to as Goldman Report). Although the specific accuracy of this data may be open to question (see Sec. IV, Chap. 2, Endnote 39), the figures do at least demonstrate a gross tendency in this direction.

[28] The policy of P.S. 8M is to keep the girl in the school, and not return her to the regular school system (although she may enter an alternate program or job training setting). The principal reported that she is able to obtain diplomas for the students. The principal at P.S. 85 has obtained a diploma through another school in at least one case (Goldman Report, p. 24).

[29] "High School Waiting List." Of the total of 2,179 students, only 905 have been evaluated and certified as emotionally handicapped; 1,274 are awaiting evaluation.

[30] ESEA Title VI. The program also serves 20 younger children.

[31] See Sec. IV, Chap. 1.

[32] The Division of Special Education itself has suggested that the unidentified emotionally handicapped and learning disabled students may be among those served in the auxiliary high school facilities ("Plan in Response to Reid," Order #8-C). For a discussion of the positive aspects of high school alternatives see Fleischmann Report, vol. II, pp. 7.10-7.18. For a report which is generally critical of these programs see "Report of the High School Principals' Association (HSPA) on Structure of Alternative Schools," (mimeo) (March, 1974).

Endnotes

[33] The data in this section is derived primarily from "An Evaluation of the Auxiliary Services for High Schools Program 1972/73," Center for Educational Research and Field Services, School of Education, New York University, July, 1973, Function #17-36452, and from the experiences of William J. Jesinkey, former guidance counselor for the Board of Education who participated in the initial development of the program. Auxiliary Services is funded under the State Urban Education Program. The funding for 1971/72 was $1, 508,042.

[34] *Ibid.*, pp. 20-22.

[35] Data provided by personnel of the Unit of Auxiliary Services for High Schools.

[36] "An Evaluation of the Auxiliary Services for High Schools Program 1972/73." Out of the 897 who took the examination, only 660 passed out of a total population served of 11,917.

[37] *Ibid.*, pp. 22-23.

[38] The information in this section was provided by Beatrice Bass, in charge of Mini-Schools for the Division of High Schools.

[39] "Directory of the Public High Schools, New York City, 1973/74," Board of Education of the City of New York, p. 32.

[40] In a recent report, "Report of High School Principals Association on Structure of Alternative Schools" (March, 1974), the High School Principals Association (HSPA) recommends that the alternative schools should "continue to cater to truants and potential drop-outs." HSPA objects to, "as intolerable," any movement by the schools to recruit a representative sample of the city's pupil population (HSPA report, p. 7). The authors suggest that that recommendation by the HSPA is indicative of the abdication by the principals of *their* responsibility toward high school age students with special needs, particularly since the report is highly critical of the programs available in the alternative schools. The HSPA report does suggest that the alternative schools serving "troublesome pupils" do require added services including: one guidance counselor for every 100 students; reduction of class size from 25 to 15; family assistants; educational assistants for individual instruction; and hardware and trips (at p. 8).

SECTION V

THE QUASI-PUBLIC SECTOR

THE QUASI-PUBLIC SECTOR[1)]

Alongside the fragmented and insufficient New York City public school program for the education of emotionally handicapped children, there has developed an extensive quasi-public system for the day-school education of emotionally handicapped children in privately administered facilities, which are largely financed through public monies. There are up to 2,500 emotionally handicapped children served by this quasi-public system. 1) The overwhelming majority (2,000) attend 4407 schools,[2)] proprietary or non-profit facilities which have been essentially supported by $2,000 per child yearly grants from the State* under Section 4407 of the New York Education Law. 2) On the basis of Family Court orders under Section 232 of the Family Court Act an incresing number of children receive supplemental grants to cover the full cost of tuition at 4407 schools. There are presently about 1,000 New York City children who have either obtained or are in the process of applying for 232 Orders.[3)] Many of these children are designated as "emotionally handicapped."** 3) In addition, over 400 children[4)] attend Day Treatment Centers, facilities which provide integrated therapeutic educational programs. For these centers, the Board of Education supplies the teaching faculty, and an outside agency (usually a voluntary agency) provides the physical facility, and clinical and other services.

As has been discussed earlier in this report[5)] the State is now in the process of replacing the 4407 system with a system under which the school districts (including New York City) themselves contract with the private schools under Education Law Section 4404 (2)(b). The Board of Education is now in the process of negotiating such contracts with schools previously approved by the State Education Department under Section 4407.

The background of the schools which make up the quasi-public sector varies. Some of the private facilities were founded prior to the availability of any of these sources of public funds, strictly as private schools with tuition paid entirely by parents. Some of these schools opened to fill a void created because the public sector had failed to provide service for these children. Many of the schools have been set up relying on these public funding sources. At this point, regardless of their origin, and in some cases despite the desire of the schools themselves, the schools have become dependent on public funds.

As a generalization, the private facilities have considerably greater services, smaller classes, and more favorable teacher-student ratios than the public schools programs for comparably handicapped children.[6)] Some of the private schools have been in the forefront of providing special educational services to certain types of handicapped children,* and some of the schools have unique programs.

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*In the spring 1974 legislative session, this amount was raised to $2,500.

**In June 1973, the authors surveyed the records of monies paid out, up to that month, by the City of New York pursuant to 232 Orders. The overwhelming percentage of such payments (about 80%) appeared to be on behalf of children diagnosed as brain-injured, emotionally handicapped, or a combination thereof. (It was not possible to make a precise calculation, since not all cases included a diagnosis.) According to the records, payments for 1970/71 amounted to $24,848.40, for 1971/72 $248,870.85 (records for 1972/73 were incomplete at the time of the survey).

Although the quasi-public schools (4407 schools and Day-Treatment Centers) rely substantially on public funds, in other respects the schools are not integrated into the public system. The Division of Special Education does not recognize these programs as resources to be included as assets in planning for a total continuum of services for children in need. In addition, there is no systematic referral system from the public system for placement in these schools. Referral to the private schools is dependent on family or other private initiative, and the schools are autonomous in setting their own criteria for admission of pupils. The quasi-public sector has been largely unavailable to the child from the poor family and particularly from the disorganized family, because referrals depend mainly on independent initiative, and because in most cases the family must pay a substantial amount over the tuition grant. Furthermore most of the schools will not admit children from "uncooperative" families and will only admit aggressive children in controlled numbers.

The overall process has had the effect of not only excluding poor children from the quasi-public sector, but also of de facto discriminating against minority group children. By all indications the quasi-public sector serves a disproportionately low percentage of minority children.7) Although the valuable resource of the quasi-public system is needed and should be preserved -- even expanded -- remedial action as set forth more specifically below, is required to assure that we do not continue to have a dual racially and economically segregated special education system.8)

4407 SCHOOLS 9)

Population Served

The original purpose of Section 4407 was to provide for the child with an "unusual type of handicap or combination of handicaps,"10) presumably difficult to place in the public sector.11) However, because of the actual gap in public special education services in New York City, the 4407 system has come to serve some 4,300 New York City children, two-thirds of whom are labelled as emotionally handicapped or neurologically impaired (or a combination of these two conditions) for whom there is no place in the public sector. Most of the children could not be considered "unusually handicapped." In New York City there are about 50 proprietary and non-profit schools which have been approved by the State Education Department as 4407 schools. About half of these schools serve emotionally disturbed and brain-injured children.

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*The League School, Blueberry Treatment Center, Lifeline School, and the Manhattan School, for instance, have played a pioneer role in providing educational programs for severely disturbed children previously considered ineducable. These schools all follow different approaches. In another area of handicap, the Association for the Help of Retarded Children has run programs for profoundly retarded children thought before to be ineducable.

The 4407 schools serving emotionally handicapped and brain-injured children with a broad range of handicapping conditions, extend from schools with severely disturbed children whose prognosis may be permanent institutionalization, to schools serving mildly disturbed or minimally brain-injured children, the overwhelming majority of whom go on to college. The 4407 schools normally range in enrollment size from about 20 children to 150 children.[12] Unlike the public sector programs most of the private schools are not set up on a narrow categorical basis but rather serve both emotionally disturbed and brain-injured children and in some cases other handicaps as well.*

In order for a handicapped child to obtain a 4407 grant, the child must be of school age (between 5 and 21), the child's family must apply for assistance (although the grant goes directly to the school) but financial ability to pay is not a consideration, the child must be examined by a psychologist and an appropriate physician and found to be handicapped and in need of special education and that finding must be approved by the Board's Division of Special Education and the State Education Department, the Division of Special Education must state that there is no public program available, and the private school must have been approved by the State Education Department as a special education facility. Typically, virtually all children in a 4407 day school are receiving 4407 aid.

At present the $2,500 tuition grant, with few exceptions, does not cover either the tuition or the per pupil cost of the private special education program. Tuition at a school serving emotionally handicapped children is typically between $3,500 and $4,500.[13] Thus in most cases the family is required to pay between $1,000 and $2,000 in excess tuition, clearly an impossible barrier for a poor family. It is possible to obtain a Family Court order covering the full cost of tuition, and the use of such orders has accelerated in the past several years. But until recently, the 232 procedure itself has been a complex and onerous process, requiring an attorney, and has been available to comparatively few poor children. Most 4407 schools state that they provide scholarships for some children. Usually these are children who are receipients of 232 assistance to cover the added cost of tuition. Regulations of the Commission of Education provide that 4407 schools (in which 10 or more children are receiving such aid) are required to provide "instruction at no additional cost to at least ten percent of the school's enrollment."[14] However, as interpreted by the State Education Department, this percent may include children who receive aid from other sources indluding Family Court orders.[15]

Tuition is only one bar to the poor child. The 4407 system relies primarily on family or other individual initiative to find placement. Not only is the poor parent unaware of the availability of the 4407 alternative, but guidance counselors and others serving poor and minority communities, who would be the natural link between the public and quasi-public system, do not see 4407 as a possibility for the children they service. One guidance counselor serving a high school of over 5,000 children from predominantly low income families, said that he had been involved with 4407 placements only a few times, and then at parent initiative.

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*Some schools for severly emotionally disturbed children, such as Blueberry School and Lifeline School, limit themselves to an emotional disturbance of a particular kind.

The certification requirement similarly operates as a deterrent to the poor family and particularly to the disorganized family. Obtaining a diagnosis that the child is handicapped and in need of special education is not in itself difficult for a family who is able to use private clinicians.* However, for a parent from a low income family dependent on clinics and public services, obtaining a diagnosis itself may be an insurmountable obstacle. The obstacle is compounded for the child when the family is unassertive, disorganized, overwhelmed, or unconcerned.16) The 4407 schools which have been organized in an attempt to serve poor children have found that they have been forced to take over the process of obtaining or putting together the needed clinical data themselves.

The 4407 schools set their own criteria for placement. For instance, one school stated that they would not take anyone who "looked peculiar." Many of the schools stated that they would not take severe behavior problems because they did not have the facilities for handling such children (although these schools have greater services than the public system), and most schools that do accept acting-out children will only accept them in limited numbers. Almost all schools said that they would not take pupils from uncooperative families since the prognosis for success was poor. Personnel in the field (such as guidance counselors and social workers) who make referrals, stated that they did not discern a pattern of rejection of any minority group, but that in their experience, the private schools would not accept the difficult child or a child from a difficult family. Because of the weeding out process inherent in the present referral and placement system, the private schools, at this time, have not been faced with referrals of substantial numbers of minority group children.

Ethnic data that is available on enrollment in the private schools indicates that there is a disproportionately low number of minority group children in 4407 schools. Of the 4407 schools seen by the authors, the population was only

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*In the imprecisely defined areas of emotional disturbance and neurological dysfunction, there is scope for varying diagnoses as well as a probable tendency to structure the evaluation to meet the purpose of filling the preconditions for receiving aid. For instance, some 4407 schools, in their promotional material, state that their schools are for children with "learning disabilities and for non-achievers." The State Education Department does not consider these conditions as constituting handicaps for the purpose of 4407. However, the children attending these same schools are certified as emotionally disturbed and brain-injured, and do receive tuition grants on this basis. SED does not accept the category of "socially maladjusted" as constituting a diagnosis of handicap either. This in itself is not a barrier to qualify for 4407, however, since a "socially maladjusted" child can undoubtedly obtain the required diagnosis of "emotionally disturbed" once he sees a clinician.

33% minority.[17)] Even within the 4407 schools there are patterns of overwhelmingly white and overwhelmingly Black schools. The Hispanic population is particularly unrepresented.[18)] Both the New York City Board of Education and the State Education Department informed the authors that there was no ethnic census taken of the population of these schools.

Recently there has been a trend to set up 4407 schools for poor and difficult to place children. Three programs seen by the authors were established for this purpose and charged no tuition, using other funding sources to supplement the 4407 grant. Two of the schools plan to use Family Court grants to cover the excess cost of the program. And at least some of the established 4407 schools have used the 232 path to admit a greater number of poor and minority group children.

Program and Services Offered

All of the 4407 schools require that the child be evaluated prior to or as part of the placement process, since such an evaluation is required to obtain the 4407 grant. In addition most of the schools seen provide supplemental evaluation by the school's own personnel, ranging from an examination by a psychologist to a comprehensive diagnosis by an interdisciplinary team.

The programs followed at the different 4407 schools vary widely. As a generalization, the schools are built around an educational program which is designed to meet the special learning needs of the child, with clinical and other ancillary services provided to augment the educational program. The 4407 schools provide smaller classes, a more favorable pupil-personnel ratio and a greater degree of appropriate mental health and special services than are available in public programs which serve a comparable group of children.[19)] For instance, the Robert Lewis Stevenson School, which serves middle class and affluent children, provides clinical service within the school in a ratio of one clinician for 31 students (even though most of the students are in treatment with therapists outside the school), whereas the public school B Center program provides no clinical services at all, and the Special Day Schools have the equivalent of one clinician for a school of 140 children.

Furthermore, in the 4407 schools the ancillary personnel often work full time in a school or are an integral part of the school working under the direction of the school administration. In the public system, the Bureau of Child Guidance assigns clinicians on a part-time basis to a program, operating basically under the supervision of BCG and perhaps having only a limited relationship with other personnel in the school program.

It is not possible to make any generalization on the qualifications of the faculty at the schools. Some schools reported that they used young teachers whom they preferred to train. Others reported that their program depended on experienced specially trained teachers.

It should be emphasized that in addition to providing a greater per pupil quantum of service, some of the 4407 schools offer unique programs which could not be replaced under present circumstances within the public sector. The schools represent such diverse programming approaches as: 1) the Henry Street School which has an integrated intensive art therapy program for adolescent emotionally handicapped children; 2) the Mater Christi program, a supportive program within a regular school setting for emotionally handicapped boys who are graduates of contained public Special Day School Programs; and 3) the Queens Learning Institute which works primarily with certain perceptual learning disabilities, seeing this as the key to the child's problems.

Costs

The $2,500 tuition grant does not cover the per pupil cost of a 4407 program for emotionally handicapped children. It should be noted that reproducing these programs in the public sector would be substantially more expensive, since the private school teachers receive considerably lower salaries and benefits than teachers in the public school system.

Although the tuitions at the 4407 schools vary widely,20) the State Education Department does not appear to vigorously examine the justification for the tuitions charged.* (The State does require the submission of budgets.) This is probably because Section 4407 cuts off the State's obligation at $2,500, whatever the tuition charged. However, even where the child obtains a supplemental 232 Order, neither the court nor the representatives of the city or state (at least in New York City) customarily question the amount of tuition,**presumably because schools have already been approved by the state.

Under the Commissioner's Regulations the amount of salary which may be paid out of 4407 funds yearly is limited to $8,500 per person,21) an unrealistic limitation particularly in view of prevalent teacher salary scales in New York City.*** Since, under present circumstances the 4407 grant does not cover per pupil costs in any case, the $8,500 limitation does not present a serious problem. However, if the 4407 limit were raised with the objective of covering full tuition cost, this salary ceiling would create difficulties, particularly for those schools which wish to serve poor and limited income families and not charge extra tuition, yet retain a stable experienced faculty.22)

As is discussed more fully in Section II., Chapter 2, the 4407 system is now at a stage of uncertainty. The State Education Department has taken the view that the city has the obligation to contract directly with the private schools, and to pay the costs of tuition under N.Y. Educ. Law Sec. 4404 (2) (b). As a temporary measure, 4407 is being continued for the coming year (1974/75) for children already recipients of such aid. Under Education Law Section 4404 (2)(b) school districts are authorized and empowered to provide for the education of handicapped children through the alternative of contracting out with non-public special education schools.22a) Under pressure from the State the New York City Board of Education is presently (September, 1974) in the process of negotiating such contracts with schools now functioning as 4407 schools. Thus far the City is offering to reimburse the schools in the amount of $3,000 yearly per child ($2,080 of this amount is in turn reimbursed to the City by the State under the newly enacted aid for severely handicapped children.22b) The issue of how the supplemental tuition costs will be covered has not yet been settled.

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*Based on observations of personnel from several 4407 schools.

** Based on observations of attorneys who have handled substantial numbers of 232 cases.

***As of September, 1974, the salary for beginning teachers in New York City was $9,700 (for the public school system).

Under Section 4404 (2)(b) private placement is an alternative; unlike Section 4407 there is no statutory requirement that there is no suitable public facility available. It cannot yet be known whether this distinction will make a difference in the placement system. The Division of Special Education has indicated that it will expect the private schools to move toward educating those children presenting the most difficult problems.[22c]

Family Court Orders (232 Orders)[23]

Under Section 232 of the Family Court Act[24] a family court judge may make an order providing for the educational needs of a physically handicapped child at a suitable institution including tuition, transportation, and maintenance. The expenses of such an order, in the case of a New York City child, are charged to the City of New York.[25] On the basis of a separate statutory provision (Sec. 4403 of the New York Education Law[26]), the City is normally reimbursed by 50% by the State. Unlike 4407 assistance, there is no maximum yearly limitation on a 232 Order. Such orders are used normally to supplement 4407 aid; such supplementary grants are rapidly becoming a significant component in the quasi-public special education system in New York City.

Section 232 aid, as issued by the courts, is based on the same conditions as the administratively granted 4407 assistance: 1) the child involved is found to be handicapped and in need of special education, and 2) no suitable public facility is available to meet the education needs of the child. However, in significant respects, 232 is broader in scope and is more flexible than 4407 assistance.[27] As stated above there is no yearly financial limit on the order. Additionally, orders may be issued on behalf of pre-school children under the age of five.[28] Section 232 assistance is available for transportation[29] and maintenance,* as well as tuition.

Although FCA 232 refers to "physically handicapped" children most family court judges have interpreted this provision to include emotionally handicapped children and according to the Legal Aid and Legal Services organizations and attorneys which have represented 232 petitioners, a significant percent of the orders routinely issued involve emotionally handicapped children.[29a]

Furthermore, although in the overwhelming number of 232 cases, 4407 aid has been granted and the court relies on certification from the city (or locality involved) and the state as to the existence of the underlying preconditions, the court has the authority to make such determinations itself and has done so where: 1) the city and state have contended that there is an adequate public program available[30]; 2) where the school has not been approved by SED as a special education school eligible to receive 4407 funds[31]; or 3) the child has not been certified as handicapped by the educational authorities.[32] In the event that the 232 petitioner does not rely on city and state stipulations, it is necessary to present proof and convince the court on those issues. Section 232 does present an alternative for contesting the City Board's assertion that it is providing an adequate special education program for a particular child. It is anticipated that as the Board of Education expands its programming for the handicapped, the number of 232 cases raising the issue of adequacy and suitability will increase.

The use of 232 in New York City was initiated by the Legal Aid Society in about 1970 in order to find a method for children without financial means to obtain special education placements. The number of 232 orders in New York City has increased from 11 in 1970/71 to 411 in 1972/73.[33] There were at least 1,000 of the 232 petitions filed for the 1973/74 school year.* One important factor in the increase of 232 applications is that a financial-means test is no longer imposed in regard to such orders in New York City. Previously families had been required to show financial need and had sometimes been required to contribute to the costs of the order. However, recent cases have held the means test to be unconstitutional or improper.34) The Corporation Counsel of the City of New York no longer attempts to obtain parental contribution for day school placements.35) Potentially this may mean that all of the 4,300 children attending 4407 schools would be eligible for supplemental 232 orders.

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*A Small percentage of the 232 cases involve residential placement.

Until recently the 232 process was an onerous procedure taking at least eight months and sometimes far longer, requiring an attorney and court hearing, and was encumbered with multiple road-blocks. Such a process was particularly difficult for poor families dependent on obtaining counsel from overloaded Legal Aid and Legal Services Agencies. The vagaries and time period involved before the school actually obtained the funds from the city was such that some schools would not admit children unless the family would put up the tuition or a large deposit in advance, or otherwise limited the number of children dependent on 232 aid, thus excluding the family with no funds. The persistance involved in following through on obtaining such an order presented a barrier for the child, especially from the disorganized or disinterested family.

During the school year 1973/74 a simplification of the 232 process was implemented, orders may be obtained on a consent basis without a court appearance in routine day school cases where 4407 aid has been granted.36) This simplified procedure meant that 232 aid was more available to children of families unable to pay expensive court costs or follow through with a complex legal process. It has not yet been settled whether the uncontested 232 process will be available to similarly supplement 4404 (2)(b) contracts.

DAY-TREATMENT CENTERS37)

Population Served

The Day-Treatment Centers are a series of integrated educational and therapeutic treatment programs initiated and administered by voluntary agencies. In these Centers the Board of Education, under the administration of the Office of Special Schools,38) provides the teaching faculty by supplying "teaching lines" and educational supplies, and the agency provides the clinical component, other educational specialists, and the physical facility. The voluntary agency's contribution, however, is to a large degree dependent upon other public funding sources. The Centers are comparatively small (serving between 20 and 80 children) and provide programs which are both intensive and expensive. The children served range from profoundly emotionally, neurologically and/or organically impaired children to moderately handicapped, emotionally disturbed and/or neurologically impaired children. In general, the children involved are more severely handicapped than the children in the 4407 schools. The programs are set forth as research institutions and some of the programs are widely recognized as outstanding.39) The system of Day Treatment programs parallels a similar system of highly endowed residential treatment centers, and in some cases the programs are attached to such residential programs.[40)]

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*Based on estimations by Legal Aid and Legal Service representatives.

Although the Day-Treatment Centers are ostensibly part of the organization of the Office of Special Schools, and although financially they are part of the public system in respect to referral and placement they are not integrated into the public system. The Centers set their own criteria for enrollment, and although some Centers serve extremely disturbed and intensely handicapped children, they often are highly selective about which individual children they accept. Potential for success, the ability to take full advantage of the expensive intensive programs, and the necessity to maintain a balanced enrollment were mentioned by the schools as criteria for acceptance. One school whose program was aimed at serving children of the type served in the Board of Education's program for moderately disturbed children[41)] reported that they had interviewed 200 children to fill a program serving 50 children. Most schools would not accept children from uncooperative families. The fact that these highly endowed programs serve only a minute percentage of the children in need enables them to be that selective.

For the most part, guidance counselors and other referring personnel, particularly those serving poverty areas, were unaware of the existence of the Day-Treatment Programs or did not see them as alternatives for the children they served.* One excellent program serving teen-aged girls reported that they got few referrals through the school system despite the fact that the lack of service for high school age girls is notorious.

The Board of Education does not maintain figures on the ethnic make-up of the Day-Treatment Programs as a discrete category. The authors' informal census, through data supplied by the Centers, indicates that although a slight majority of the children in these schools are minority children, there still is comparative disproportion in relation to the Special Day Schools ethnic population and even in relation to the ethnic make-up of the overall New York City population.[42)] Hispanic children are particularly underrepresented[43)] (one school for severely handicapped children suggested that because speech and language was an intrinsic part of the child's handicapping condition, it was difficult to work with a native Spanish child without Spanish speaking therapists, and that it was difficult to find such personnel). Although the schools do serve a significant percentage of their enrollment at no cost to the family, the obstacles inherent in the referral and placement system discourage placement of the child from the family without resources. Normally the Day-Treatment Center program is built around the strong clinical component, with the teaching services filling out the intensive therapeutic program. The Centers provide a high degree of clinical and ancillary service, far greater than that which is provided by either the public programs or by the 4407 schools.[44)] Usually as part of their service, the Centers provide a comprehensive multi-disciplinary diagnosis for each child. To an even greater degree than the 4407 schools, the Centers benefit by the fact that the clinical personnel are integral members of the staff and are able to work with both the teachers and the children on an intensive basis.

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*In some cases, programs located with the child's geographical area and renowned programs were known to such personnel, however over-application and waiting lists for these programs discouraged referrals.

The Office of Special Schools has not had a formula through which it provides teachers to the Day-Treatment Programs. Instead, the determination is made on a program-by-program basis depending on the degree of disturbance of the children served[45] (assignments to public school programs are based on a class size formula).[46]

Class size is ordinarily smaller than that provided by the Board of Education in its classes for comparably handicapped children. For example, the Board of Education "A Centers," for severely emotionally disturbed children, have six to eight children in a class with one teacher. Lifeline School has four to seven students in a room with two teachers. The teachers assigned to Day-Treatment Centers are licensed city teachers and are paid the comparatively high New York City public school teacher salaries. Within this limitation most of the schools visited had been able to select their own teachers. However, at least two schools reported being assigned teachers inexperienced in special education who were unable to work with disturbed children.*

The Office of Special Schools also provides supervisory service usually through a principal who is in charge of a cluster of schools (including other treatment centers, and schools in Neglected and Dependent Homes or psychiatric hospitals). Since the Day-Treatment Centers normally have their own educational directors this double supervisory system seems a questionable expense. On the other hand where the Day-Treatment Center does not have such an in-school director, a principal serving several schools on a part-time basis provides insufficient supervision.**

The per-capita cost to the Board of Education of the Day-Treatment Programs has been the highest of all programs administered by the Office of Special Schools. For the year 1972/73 that cost was $4,066.[47]

The component of the Day-Treatment Program provided by the voluntary agencies is normally financed through a complex combination of funding from various public sources, some financing from philanthropic resources, and in some cases fees paid by the families.*** Several of the schools are partially financed through 4407 grants, obtaining 4407 tuition grants and in some cases 232 orders for a number of their pupils.* In some programs, clinical personnel is financed in part through grants from the Department of Mental Health and Mental Retardation (DMH).** The allocation of financing responsibility between DMH and the voluntary agency is determined on a center-by-center basis through negotiation (in one Day-Treatment Center which the authors visited, DMH had provided 50% of the funding for clinical services). Schools receiving DMH grants must charge for clinical service on a sliding scale based on ability to pay.48) Some schools partially finance their clinicians through Medicaid payments.

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*Some schools indicated that they had no problem in hiring teachers of their choice. Others suggested that they had been required to take teachers who wished to transfer from other Special School assignments.

**The schools did report that individual principals were helpful in obtaining supplies and providing liaison with the Board of Education, and that they tried to be of assistance. No school felt that either the Office of Special Schools or the supervisory principals obstructed or interfered with their program.

***Children attending the centers are provided by the City with transportation on the same basis as children attending the 4407 schools.

Recently the Day-Treatment Center model has been followed in setting up programs for emotionally handicapped children in public as well as voluntary institutions. Programs have been set up at two city hospitals, with the hospital providing clinical service and the Board providing teaching lines. These programs were initiated by the Department of Mental Health and Mental Hygiene in an attempt to provide mental health care for the difficult to serve, "hard-core," disturbed child.***

It has been suggested that the Day-Treatment model may be used by the City Board if the current 4407 tuition grant system is replaced with a system of direct contracting out by the city with the private schools. However, where a system of providing a small number of teachers to work within the structured, highly clinically endowed institution may be successful, it would not be workable for a 4407 school where the entire faculty might be replaced by Board of Education assigned teachers.

RECOMMENDATIONS

1) The alternative of the quasi-public sector should be preserved. The schools are ongoing assets, some of which have assumed a leadership role, which could not be readily replaced by public programs. In any case, in the area of education of the emotionally handicapped (as well as other handicapped children) where there is a particular lack of agreement on methodology, there is an especial need for maximizing reasonable alternative approaches.

2) a)In recognition of the undeniable right under state constitutional law of handicapped children to a free public education, the full cost of education at the private school should be assumed by the city and state. A system of direct contracting out under Section 4404 (2)(b), with sufficient state support, should be workable. Even recognizing that special education for

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*Board of Education teachers are assigned only on the basis of the number of children in the program not receiving 4407 grants.

**The city is in turn reimbursed through state aid for approximately 50% of this contribution.

***Normally DMH functions as a coordinator rather than an initiator of service. The setting up of these programs was an exception.

some emotionally handicapped children is expensive, particularly for children whose problems are compounded by economic and social deprivation, the variations in the tuitions charged by the 4407 schools seems excessive. The schools, in addition to presenting audits, should be required to justify per pupil costs which are out of line. The authors suggest that the Day-Treatment model of providing lines to institutions would not be workable in regard to most 4407 schools, since it would involve replacing most of the faculty of the school and thus the core of the school (the Day-Treatment Centers usually have comparatively few faculty lines within a structure of other professionals).Furthermore, imposing the limitations of the Board of Education teacher licensing system and the high salary scale of the public system on the private schools would raise costs appreciably.

b)The private sector, however, should be included as part of the total community resources. In planning for a continuum within a community, the private school can be seen as an alternative where available public programming is not appropriate for the particular child.

3) Particularly recognizing that the private schools are principally publicly financed, safeguards should be provided to assure that the dually segregated aspect of the special education system is not continued.

a)Ethnic surveys of the pupil population of the private schools should be maintained to determine whether there are in fact ethnic disparities.

b)The public system's referral and placement resources should include private schools as resources for placement.

c)Schools receiving public funds from whatever source, should be required to accept all children within the category of handicap which they service. Lack of parental cooperation, or potential success should not be considered as valid placement criteria. Due process standards for suspension and explusion should be applied to quasi-public as well as the strictly public schools.

d)Where there is a significant disparity in ethnic representation (e.g., private schools do not appear to be serving any appreciable number of Hispanic children), the schools should be required to take affirmative action to include these children in their program.

e)In the event that a partial tuition grant system is retained, through 4407 or some other system, the schools should be required to provide a substantial number of complete scholarships which are not contingent on 232 aid.

Endnotes

[1] The financing of the quasi-public sector programs is discussed above in Section II, Chap. 2.

[2] The 2,000 approximation is derived from data supplied by Arnold Goldstein, State Aid Unit, Division of Special Education, Board of Education. Mr. Goldstein informed the authors that for the years 1972/73, there were between 4,200 and 4,500 New York City children receiving 4407 grants, that the overwhelming number of such placements were in Day Schools. He estimated that one-third to one-half of these children are diagnosed as emotionally handicapped, about one-third neurologically impaired (some children having both such handicapping conditions), and one-third such conditions as profoundly retarded, aphasic, or multiple handicapped. According to the *Fleischmann Report*, in 1970/71, 3,500 New York City children were educated through 4407 grants.

[3] In the year 1972/73, 656 Section 232 petitions were filed (see Sec. II, Chap.2). According to data supplied by the Legal Aid Society and other agencies that handle 232 petitions there are probably 1,000 petitions either in preparation or completed for this school year (1973/74).

[4] As of February 28, 1974, there were 435 children enrolled in such programs (Intake-Discharge Chart, Office of Special Schools, Board of Education).

[5] See Sec. II, Chap.2.

[6] See charts A and B.

[7] See chart D.

[8] *Juvenile Justice Confounded* documents a similar discriminatory pattern in the system which provides placement for children requiring residential mental health care. That report demonstrates that the voluntary child caring agencies, which are mainly publicly funded and which are able to provide more adequate service than public programs, discriminate against seriously disturbed and acting-out children, children from uncooperative families, and Black and Puerto Rican children. A class-action has been brought in the federal district court by the New York Civil Liberties Union and the Legal Aid Society [*Wilder v. Sugarman* (73 Civ. 2644) (S.D.N.Y.)] challenging that discriminatory system. However, that challenge is based partially on *de jure* religious discrimination, a factor which is not involved with the Day Schools.

Endnotes

[9] This section is derived in part from field visits and interviews with personnel at 12 schools, approved to receive 4407 grants, which serve emotionally disturbed or brain-injured children. The schools, which varied widely in approach, were chosen *ad hoc* and are listed on chart B. The authors obtained information such as cost of program, number of children served, type of children served, class size, and services offered, but made no attempt on the basis of one visit to evaluate the effectiveness of a particular school program. Nor do the authors claim this survey as a "sample." However, we were able to make certain illustrative generalizations which appear in the text, and in the charts B,C and D. This section is also based in part on information obtained from: Arnold Goldstein, in charge of New York City certification for 4407 placement; William Staples of the New York State Education Department (SED), Division for Handicapped; and Dr. Zelda Kaye (SED), Chief of the Bureau for Special Programs. For discussion of the operation and effect of 4407 in general, see *Fleischmann Report*, vol. II, pp. 9.31-9.32 (Ethnic Enrollment in 4407 schools), pp. 9.47-9.51 and pp. 9.75-9.77 (General Operation of 4407); and Guarino and Sage, "Support in the Private Sector: The Effects of One Legislative Provision," *Exceptional Children*, May, 1972, pp. 745-749 (a study of the effects of the availability of Section 4407 in upstate New York State School Districts, which concludes in part, that districts making increasing uses of 4407 tend to make proportionately less provision for handicapped children in their local public systems, and tend to move toward classifying children as "unusually" handicapped); also see Burton Blatt, "Public Policy and the Education of Children with Special Needs", *Exceptional Children* March, 1972, pp. 537-545.

[10] Section 4407 reads in pertinent part as follows:

> 1. When it shall appear to the satisfaction of the department that a handicapped child, who, in the judgment of the department can reasonably be expected to benefit from instruction, is not receiving such instruction because there are no adequate public facilities for instruction of such child within this state because of the unusual type of handicap or combination of handicaps, the department is authorized to contract with an educational facility located within or without the state, which, in the judgment of the department, can meet the needs of such child, for instruction of such child in such educational facility, and the department is further authorized to expend for such purpose a sum of not to exceed two thousand dollars*per annum for each such pupil.
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> . . .
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> 3. The state education department shall maintain a register of such educational facilities which, after inspection, it deems qualified to meet the needs of such child for instruction of such child in such educational facility. Such inspection shall also determine the eligibility of such educational facility to receive the funds hereinbefore specified.

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*Amended by chapter 982 of the laws of 1974 to $2,500 per annum.

Endnotes

[11] The original purpose of 4407, as stated in the State Education Dept. Memoranda, [N.Y.S. Legislative Annual (1957), p. 1611] when enacted in 1957 was to serve a few "unusually handicapped" children to be placed out of state and was limited to physically handicapped children. The statute was amended in 1966 to include mentally handicapped children and private facilities within the state, and again in 1967 to include emotionally disturbed children. The use of 4407 in the state has grown from 65 children in 1965/66 to 3,000 in 1967 to the 1974 level of 4,300. In 1971, in response to criticism about the burgeoning use of 4407, the Commission of Education promulgated new regulations applicable to 4407 schools, [Regulations of the Commission of Education, Sec. 200.4]. Some aspects of the regulations are discussed within. Also see Fleischmann Report, vol. II, p. 9.75 and "Support in the Private Sector; The Effects of One Legislative Provision," pp. 745-6.

[12] See chart B. Note that one school has only 8 children enrolled (Gramercy Hill), while one school has 450 (Adams).

[13] See chart C.

[14] Regulations of the Commissioner of Education, Sec. 200.4 (b)(7).

[15] As reported to the authors by William Staples, another aspect of that regulatory provision requiring that the Human Resources Administration designate the scholarship students has not been followed; the schools themselves select such students.

[16] See discussion of the difficulties of the diagnostic and evaluation processes, Sec. III, Chap. 2.

[17] See chart D. The authors do not suggest that these schools are a representative sample but only that their figures indicate a racial disparity which should be further investigated.

[18] See Endnote 17 and chart D.

[19] See charts A & B.

[20] See chart C.

[21] Regulations of the Commissioner of Education, Sec. 200.4 (b)(5).

[22] The $8,500 limitation was apparently derived from an identical statutory limitation in regard to the state contribution to BOCES programs [N.Y. Educ. Law Sec. 1950(5)]. That limitation was raised to $9,500, beginning July 1975 by the 1974 legislature and presumably the 4407 regulatory limitation will be raised comparably. However, even $9,500 is not realistic in terms of the city's salary scale. A similar difficulty is presented by the state regulatory

requireme[illegible], Sec. 200.4(b)(2) as interpreted by SED, requiring that a school be in operation for one year prior to receiving 4407 approval. Thus, a school must find another funding source (tuition or some other means) for its initial year. See Matter of James B. 75 Misc. 1012 (Fam. Ct. Kings, 1973) ordering 232 payments to cover expenses for a group of children attending a school in its first year, and ordering SED to inspect the school.

[22a] Section 4404 (2)(b) reads as follows:

> "Provided, however, that in each city or union free school district in which schools for handicapped children exist or may hereafter be established, which are incorporated under the laws of the State and are found by the board of education to be adequate to provide instruction adapted to the mental attainments and physical conditions of such children, the board of education shall not be required to supply additional special classes for the children so provided for. The boards of education of such cities or union free school districts are hereby authorized and empowered to contract with such schools for the education of such children therein.
>
> Such city or union free school districts are also authorized and empowered to contract with private schools outside of such districts but located within the State for the education of such children, provided that such schools must be incorporated in the State of New York and must be registered by the commissioner in accordance with standards established by him."

[22b] Chap. 241 of the Laws of 1974 Sec. 15: such aid for the severely handicapped is only available to the large city school districts.

[22c] Statements of Helen Feulner, Executive Director of the Division of Special Education, to Chancellor's Advisory Committee on Special Education, September 19, 1974.

[23] This section is based in part on interviews with attorneys and para-professionals who have handled Section 232 applications for both The Legal Aid Society and Queens Legal Services, as well as the authors' own experience in helping to process some 250 Section 232 applications under the direction of Queens Legal Services, and of private attorneys. For a detailed and exceedingly helpful manual on the 232 procedure see Sandra Wottitz, "Obtaining Financial Aid for the Education of Handicapped Children," Legal Aid Society Juvenile Rights Division, July 1972; see also "Court Orders for Educational Services for Handicapped Children," SED (Division for Handicapped Children) (undated), and Case "Alternative Schools for Exceptional Children," The Advocate , Spring, 1973, available from Queens Lay Advocate Service, 149-05 79th Avenue, Flushing, N.Y., 11367. On 232 in general, see Fleischmann Report, vol. II, p. 9.76 and Survey of New York State Programs for the Education of Handicapped Children, prepared for the Program Analysis Review Committee in cooperation with SED, March 1971, pp. 83-87.

[24] Sec. 232 provides in pertinent part:

232. Educational and medical service

a) The family court has jurisdiction over physically handicapped children.

Endnotes

1) Educational service. In the case of a physically handicapped child, the court may accept the certificate of the state department of education as to his educational needs, including home teaching, transportation, scholarships, tuition or maintenance.... Whenever a child within the jurisdiction of the court and under the provisions of this act appears to the court to be in need of special educations training, including transportation, tuition or maintenance, and, except for children with retarded mental development, home teaching and scholarships, a suitable order may be made for the education of such child in its home, a hospital, or other suitable institution, and the expense thereof, when approved by the court and duly audited, shall be a charge upon the county or the proper subdivision thereof wherein the child is domiciled at the time application is made to the court for such order.

. . .

c) "Physically handicapped child" means a person under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or is physically handicapped, as provided in section two thousand five hundred eighty-one of the public health law.

[25] Sec. 232 a) 1) Provides that the expense of an order is chargeable to the child's home, "county, or proper sub-division thereof." This provision does not create a problem in New York City. However, it does create an anomaly in other areas, since the cost of educational service is normally borne by the local school district with state aid rather than by the county. See Matter of Kirschner, 74 Misc. 20 (Fam. Ct., Monroe, 1973).

[26] Section 4403 provides in pertinent part as follows:

Procedure through family courts; cost of educational services

1) The state education department shall have the power and duty to provide within the limits of the appropriations made therefor, home-teaching, transportation, scholarships in non-residence schools, tuition or maintenance and tuition in elementary, secondary, higher, special and technical schools, for handicapped children in whole or in part from funds of the department, when not otherwise provided by parents, guardians, local authorities or by other sources, public or private. When the family court, or the board of education of the city of New York, shall issue an order to provide for the education, including home-teaching, transportation, scholarships, tuition or maintenance, of any handicapped child, the commissioner of education, if he approves such order, shall issue a certificate to such effect....

2) One-half of the cost of providing home-teaching, transportation, scholarships in non-residence schools, tuition and maintenance, as provided in subdivision one of this section, as certified by the commissioner of education, is hereby made a charge against the county or city in which any such handicapped child resides, and the remaining one-half of the cost thereof shall be paid by the state out of moneys appropriated therefor....

Endnotes

> 3) The legislature shall appropriate an amount sufficient to pay one-half of all the claims paid by a county or city for the purposes and in the manner herein specified....

It has not yet been settled whether the Family Court has the power to issue an order requiring the state to reimburse the city. Several Judges have held that the court has such power. See Matter of Apple, 73 Misc. 2d 553 (Fam. Ct. Queens, 1973) and Matter of Michael B., 73 Misc. 2d 339 (Fam. Ct., Kings, 1973) (both courts disagreed with the state's contention that the Department of Social Services was responsible for the education of the handicapped child who is a public charge), but see also Matter of McDonald, (351 N.Y.S. 2d 120) (Fam. Ct., Bronx, 1974) and Matter of Dara L., 73 Misc. 2d 723 (Fam. Ct., New York, 1973) involving the same issue as the Apple and Michael B. cases, in those cases although the court agreed that the state's legal view was erroneous and that the refusal to reimburse was invalid, it held that the city would have to bring a separate Article 78 proceeding in order to obtain reimbursement from the state. See also Matter of Leitner, 40 A.D. 2d 38 (2d Dept. 1972) which modified a 232 order that the cost of placement be made a charge against the County of Westchester by providing that the county should be reimbursed by the state under 4403 by 50%. However, in this case, the Commissioner of Education had approved the Family Court order.

Although 4403 refers to orders by the Board of Education of the City of New York, as well as Family Court Judges, the Board has not in practice issued such orders. As part of recent negotiations surrounding contracting out, the State has suggested that the Board issue orders for the full cost of tuition (to be reimbursed by the State by 50%); representatives of parent groups have proposed that the Board automatically issue 4403 orders to supplement the 4404(2)(b) $3,000 reimbursement.

[27] The interrelation as well as the inconsistencies, conflicts, and ambiguities among Secs. 4403 and 4407 of the Education Law and Sec. 232 of the Family Court Act, in addition to other provisions pertaining to the education of the handicapped, have caused considerable difficulties for the courts who are required to reconcile and implement these provisions. One court has characterized the statutory scheme as "at best, cumbersome, and at worst, unclear and unnecessarily complex" (Matter of Leitner, p. 42). For similar comments see Matter of Richard C., 75 Misc. 2d 517 (Fam. Ct., Kings, 1973) ("not overly-explicit in providing touchstones to guide the court," p. 519); Matter of Vlado (H358) (Fam. Ct., Queens, May 30, 1973) ("vague, indefinite and poorly drawn"); Matter of Borland 72 Misc. 2d 766 (Fam. Ct., Monroe, 1973) ("unclear and appear to create inconsistencies") and Matter of Daber, 71 Misc. 2d 303 (Fam. Ct., Queens, 1972) ("hodge podge," p. 305)

[28] Matter of Dixon, H-8739/73 (Fam.Ct., Kings) ordering the City of New York to pay transportation charges for a group of severely retarded pre-school age children participating in a pre-school special education program run by a community school district. Fam.Ct. Act. Sec. 232(c) provides that a handicapped child means such a person, "under twenty-one years of age". See also N.Y. Pub. Health Law, Sec. 2581 and N.Y. Admin. Code, Sec. 556-18.0.

Endnotes

[29] Transportation is ordinarily not a concern in 232 cases involving New York City Day Schools, since the Board of Education routinely provides transportation to handicapped children attending private special education schools (see Sec. II, Chap. 2). Transportation will be ordered in other circumstances; see Matter of James B., 75 Misc. 1012 (Fam. Ct. Kings, 1973).

[29a] Section 4403 of the Education Law (the cost allocation provision pertaining to 232) refers to handicapped children, which term as defined under Sec. 4401 of the Education Law specifically covers emotionally handicapped children. In several reported cases 232 Orders have been granted for emotionally handicapped children: Matter of Diana L. (the child involved was both brain-injured and emotionally disturbed), the court found that although the public special education program was adequate to meet the needs of children with similar physical handicaps, because of this child's overlying emotional handicaps to progress she had to be in a residential program, stating that [232] "does not in any manner appear to limit its benefits to those children whose physical disability arose in any particular manner or place," (at p. 663); see also Matter of James B. (a diagnosis of "schizophrenia childhood type" with some "autistic components"); Matter of David H. 72 Misc. 2d 59 (Fam. Ct., Queens, 1972) (schizophrenia of childhood); furthermore one of the two appellate level cases involving 232, Matter of Leitner, involved an autistic 12 year old, with likelihood of organic substrate. However, one judge in the family court, Queens County, has recently (summer 1974) denied a petition, holding that 232 does not apply to emotionally handicapped children.

[30] Matter of Richard C.; Matter of Daber; see also Matter of Hillary M., 73 Misc. 2d 513 (Fam. Ct., Erie, 1972); Matter of Diana L., 70 Misc. 2d 660 (Fam. Ct., Westchester, 1972); Matter of Peter H., 66 Misc. 2d 1097 (Fam. Ct., Westchester, 1971).

[31] Matter of James B. The question of whether 232 is available to a handicapped child to attend a private school which is not a special school, but where such a placement has been recommended professionally, has not yet been settled.

[32] Matter of Richard C.

[33] See Sec. II, Chap. 2.

[34] Matter of Arthur K., 74 Misc. 2d 872 (Fam. Ct., Kings, 1973); Matter of Downey, 72 Misc. 2d 772 (Fam. Ct., N.Y., 1973); Matter of David H.; Matter of Wolfson, H-8643/72 (Fam. Ct., Kings, Sept. 1972). See also Matter of Leitner; Matter of Apple; Matter of Borland and Matter of Kirschner cited above.

[35] The Appellate Division has recently held that parental contribution may be required for maintenance costs at a residential school when the parent has the ability to pay. See Matter of Claire, No. 621 (App. Div. 1st Dept., April 30, 1974).

[36] Memorandum, Irving Gerstman, Law Department, City of New York, dated April 8, 1974

Endnotes

[37] This section is based, in part, on field visits and interviews with personnel at seven Day-Treatment Centers (see chart B); Dr. Dorothy Berezin, Director of Children Services, N.Y.C. Department of Mental Health and Mental Retardation (DMH); Bruce Winnick, Director of Family Court Clinical Services (DMH); and data provided by Office of Special School personnel.

[38] Sec. IV, Chap. 2.

[39] Fleischmann Report refers to the League School, one of the Day-Treatment Centers, as "among the best in the country" (vol. II,9A.1). On the other hand, some of the treatment centers have been criticized as sloppily administered or publicity oriented. Since the programs are often organized around particular treatment philosophies and individual programs, some criticism may be generated by proponents of differing theories. The authors made no attempt, on the basis of one field visit, to evaluate the particular programs.

[40] For a description of the residential treatment centers, see Juvenile Justice Confounded.

[41] See Sec. IV, Chap. 1.

[42] See chart D.

[43] See chart D.

[44] See charts A and B.

[45] As reported to the authors by the Office of Special Schools.

[46] See Sec. IV, Chaps. 1, 2, and 3.

[47] Evelyn Zwicker, Office of Special Schools.

[48] Such is required under the New York Mental Hygiene Law (Sec. 11.21). This requirement is apparently applied liberally and fees appear to be minimal or low.

SECTION VI

MAJOR CONCLUSIONS AND RECOMMENDATIONS

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CONCLUSIONS

Insufficiency

The authors find that there continues to be an insufficiency of educational programs available for emotionally handicapped school-age children and that the lack of services extends from in-school (mainstream) supportive programs to full-time Special School programs. The landmark Reid determination judicially recognized such a lack of educational facilities, and mandated an expansion of programs to accommodate all those children in New York City needing special education. However, it is unlikely that even under that mandate the city school system will be able to provide imminently any adequate programs for some 13,000 unserviced emotionally handicapped children; particularly since the children now neglected include those with the most complex problems and those for whom it is most difficult to provide appropriate programs: the multiply handicapped emotionally disturbed children, children from multi-problem families, and the adolescents. While this insufficiency has tragic consequences for children and families at all economic levels, the severest impact is on the poor, minority child.

Inadequate Quality of Service

The authors find that a substantial number of the public sector programs which are available for emotionally handicapped children lack essential services and treatment and educational goals, and that those programs therefore do not qualify as suitable facilities for the special needs of the children involved.* That inadequacy is particularly the case in regard to those programs (listed below) which are the major source of placement for poor and minority children, and which, in turn, are the primary service for such children.

1)The classes for moderately emotionally disturbed children (formerly known as B Centers) lack the mental health and specialist service required for a therapeutic program, and also lack appropriate academic goals.

2)The Special Day Schools similarly lack needed services, and further are locked into a holding operation orientation; academic achievement is limited; and, above all, they lack credibility in the community.

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*This generalization of inadequacy does not apply to each class or program on an individual basis. As noted in the body of the report, there are some excellent programs in both the public and private sector.

The Reid case will serve a negative purpose if it merely results in multiplying the number of children labelled and necessarily stigmatized as "emotionally handicapped" and placed in programs which do not offer educational and therapeutic benefits.

Discrimination

We have found that the special education system for emotionally handicapped children in New York City consists of a dual system which discriminates against poor, minority children, and above all, against children from overwhelmed and "un-cooperative families." The private sector (supported primarily with public funds) serves primarily white and middle-class children, and the public sector serves poor minority children and children from difficult families. While the private sector is a valuable asset which is not expendable, the discriminatory aspects of the system must be overcome.*

Furthermore, in many instances there has been a failure to recognize the learning and emotional difficulties of disadvantaged children as handicapping conditions. Unlike the middle-class child, the poor child continues to be evaluated only in terms of the social consequences of his actions. Thus, the disadvantaged child who is quiet will be ignored, regardless of whether his needs are interfering with learning and potential; whereas the socially disruptive child will be placed in a program, but it will be a program primarily fashioned to contain behavior, rather than to deal with the child's basic needs.

Fragmentation

We find that there is a wasteful fragmentation and lack of continuity even in reference to those programs and services which are available. The continued total centralization of all special education services in particular artificially separates the administration of such education from the mainstream of the regular school system. Furthermore, there is a failure to provide continuity and co-ordination for children from one school level to another, or for children who move within the city. We are not suggesting that children be locked into special education for their long-term school career, but that transitional services and co-ordination should be afforded.

Lack of Accountability

The authors submit that accountability and visibility are important controls on the quality of services. In the area of education for disadvantaged emotionally handicapped children, there are few avenues for such accountability The services are centralized, removed from district or community authority, yet, on the other hand, are only loosely controlled by the central authorities. And the parents of the children involved in these programs, which are economically segregated, are not in a position to safeguard the needs of their children. The authors suggest that it is the lack of visibility which has permitted situations to exist such as the jurisdictional fight between DMH and the Board, which has resulted in blocking mental health services for the classes for emotionally handicapped children.

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*The authors did find that there was a widening acceptace among most private schools of their obligations to poor and disadvantaged children, however funding uncertainties continue to present obstacles to increasing the numbers of such children accepted by the private schools.

RECOMMENDATIONS

Planning

A long-term flexible plan should be prepared by the Board for implementing the Reid Order in regard to programs for emotionally handicapped children. In an area such as education of emotionally disturbed children, where there has heretofore been a near total absence of service, it is patently impossible to instantaneously provide an adequate system of services. Since a new Bureau for the Emotionally Handicapped has just been established by the Board, it would be particularly appropriate to undertake such a Plan. That Plan (and a plan is required both by the Reid litigation and as a condition of receiving special appropriations for handicapped children under the new Chapter 241) should encompass the following: 1) projecting the number of children involved, their ages and needs, and where within the city they reside; 2) estimating the service needed from in-school mainstream supportive programs to full-time programs, and the priority needs for service; 3) including as resources, the private sector programs (and how they might be expanded), community district resources, and various alternative programs; 4) analyzing the per pupil costs of the various programs; and 5) methods for determining the long-range effect on a child as a result of the intervention of the various special education programs.

The authors do not suggest that there can be a total social planning scheme which will account for all contingencies, however there should be some basic understanding of the direction in which the Board is moving. We feel that rational planning is essential if we are to obtain a substantial improvement in special education for these children.

Quality of Service

It would be tragic if the consequence of the Reid case and the right-to-education movement was the implementation of a vast custodial program in New York City. The evidence so far is that, although governmental authorities pay lip service to the commitment to provide a public education for all handicapped children, they have not recognized the needs for a properly therapeutic program, or realistically faced the costs involved. The authors anticipate that there will be litigation on the issue of quality of service and that, in New York, such litigation might be based on the issue of "suitability" of the special education service as required under the New York Education Law (Section 4404).1) Although the quality of special education is not yet an issue which has come to fruition in the courts, and judges are normally reluctant to substitute their judgment for that of educators, the history of special education in this city and state, demonstrates that without judicial mandate there has been an unwillingness to face the financial and other commitments which are necessary to provide services for those who have special needs but only limited ability to pressure on their own behalf.

Discrimination

It is essential that the dual system of special education be rectified. As a first step to determining the extent of racial imbalance and segregation, the Board of Education should undertake an ethnic census of the various special education programs in discrete categories: i.e., A Centers, B Centers, Classes for the Brain-Injured. Day-Treatment Centers, 4407 Schools. Furthermore, while the authors believe that it is important to continue the quasi-public sector (and there is a particular need for competitive and different programming in the area of education of the emotionally handicapped), steps must be taken to maintain that system in a non-discriminatory manner. This should be a priority matter if the Board is to undertake contracting with the private schools. While the schools should be permitted to establish legitimate criteria for placing children in their respective programs, criteria such as family cooperation and success potential should not be considered valid. Furthermore, where the ethnic breakdown of a school indicates a failure to serve certain minorities, the school should be required to undertake outreach efforts to serve such children (for instance, the private schools might be required to provide some bi-lingual service). Schools which feel that they cannot undertake such efforts would have to forego the benefits of public funding.

Organization of Services

The current massive expansion of special education services should not be carried out exclusively through the centralized Division of Special Education.* As we have pointed out in regard to the private sector, at least in the area of education of the emotionally handicapped child, there is a necessity for a variety of programs and techniques which are sensitive to particular needs. Ultimately, there should be a continuum of services available at a community level. We suggest that such a program could best be administered at the local level through the community school boards and the respective Committees on the Handicapped. However, as of now, many of the districts are not attuned to, or ready to accept their responsibilities for children with special needs. Therefore, we suggest that on a pilot basis, districts which demonstrate the willingness and ability to do so, should be given the authority to administer some programs.

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*We recognize that some groups representing handicapped children feel that continued centralization of special education protects the interests of those children. Our experience is that for those children considered "emotionally handicapped," centralization has not resulted in appropriate adequate programs.

Guidelines for the Protection of Handicapped Children

Enforceable guidelines should be issued by the central authorities (the Board of Education and the Chancellor) which are protective of the full spectrum of rights of children involved in special education programs. Such guidelines should pertain to such areas as: 1) due-process protection for children placed in special programs, and 2) district and school obligations to serve handicapped (districts should not have the right to refuse classes for handicapped children, or to eliminate services such as guidance or attendance without providing acceptable alternatives).

THE CHILDREN -- ANOTHER EXPERIENCE

Darren

Darren is an 18 year old boy who has just graduated from high school and will begin City College in the fall. He is Black, the only son of a domestic worker who was deserted by her husband when Darren was born.

At 11, Darren was in great difficulty. The previous year he had been expelled from a private parochial school because of disruptive behavior. In the public elementary school, his behavior continued to be uncontrollable, although he was transferred from one class to another and was suspended by the principal. Darren was more than two years retarded in reading and he did virtually no school work. When the school threatened that Darren would have to be suspended by the superintendent, his mother agreed to transfer him to a Special Day School. However, both she and Darren were hostile to the move to what she considered would be custodial placement for her son, who she insisted was smart.

In the contained and controlled atmosphere of the Day School, Darren's in-school behavior improved. However, he began to get involved in incidents outside of school.

At the Special School, Darren was assigned to a reading teacher who perceived that he was intelligent. Both she and his classroom teacher worked intensively with him and he made rapid advancement in both reading and in the limited academic program which the school offered. By the time of his last year in the Special Day School, Darren was reading above grade level and was the best student in the school. However, his anti-social behavior out of school had accelerated. He was arrested for car-theft and a delinquency petition was filed against him.

The guidance counselor in the Special School had found a potential high school placement for Darren in a special education program providing supportive service in a regular private high school. The school and the counselor convinced the Court to allow them an opportunity to work with Darren.

In that high school, with the availability of a full and diverse program, Darren's academic achievement increased. He became interested in writing, and the English teacher in the school felt he had a real talent to be developed. With achievement, his attitude became less hostile and angry. However, on several occasions he did get into serious arguments with other students and teachers, but the special program counselor was able to work through these problems with him. By his senior year, Darren had a 90 average, he had taken an after school job and by all indications he was not only out of trouble, but on the road to developing his full potential.

Jimmy

Jimmy is a 10 year old white boy who now lives with his mother and stepfather in a house in Brooklyn. He attends a regular public school and seems to be doing well.

Two years ago Jimmy was an angry confused child whose destructive behavior evoked continual hostility and annoyance from others. He had not learned to read and was continually physically agressive in school. His stepfather was unable to tolerate him and had told Jimmy's mother that he could not continue to live with Jimmy. Jimmy's mother was torn between her son and her husband, and became very nervous and confused.

Through a guidance counselor in the school, Jimmy was transferred to a private special school. In this school, where the teachers and staff accepted him, Jimmy began to relax. Through intensive work, he began to learn to read, and with that success he began to feel better about himself. When Jimmy's behavior improved, his stepfather was able to enjoy being with him and even took him on outings by himself. The cycle of failure and frustration had been broken.

By the end of one year in the special school, when the family moved from their apartment to a house in another neighborhood, Jimmy was able to re-enter a regular public school and thus far is adjusting there.

It is the authors' conviction that for children like Darren and Timmy special education can be the instrument for breaking the cycle of failure, frustration, and attendant anti-social acts. An appropriate program designed in terms of the specific needs of the child involved, with the minimal degree of isolation from the regular school and with an emphasis on learning achievement, can lead the child, whose emotionally handicapping conditions have barred learning and adjustment, on a path to self-realization and to making a positive social contribution.

Endnotes

[1] Although a challenge to the suitability of a special education program under Article 89 of the Education Law would be the most direct attack, there are other possibilities for a judicial challenge to program quality. That is that the New York State constitutional and statutory right to an education requires a program designed to help the individuals involved reach their full potential, and impliedly at least a professionally defensible educational program (*Maryland Association for Retarded Children et al. v. State of Maryland*) and an equal educational opportunity for all children in the state (*Robinson v. Cahill*, 62 N.J. 473 (1973) p.513) Further the compulsory scho law and the generally compulsory nature of special education placements, infers *a mutual* obligation on the part of governmental and educational authorities to provide a bona fide educational program. (*Maratella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972), and other cases involving the right to treatment for persons compelled to be institutionalized). Further arguments may be based on the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution (see *PARC and Mills* cases cited earlier in this report) and on the Federal Rehabilitation Act of 1973 (No. 93-112) which prohibits discrimination against handicapped persons under any program or activity receiving Federal financial assistance (Title V, Sec. 504). That prohibition against discrimination may require compensatory special education. (See *Lau v. Nichols*, 94 S. Ct. 786 (1974): *Serna v. Portales* C.C.A. 10, July 17, 1974, 43 Law Week 2057 (8/13/74); *ASPIRA v. Board of Education*, 88 F.R.D. 62 (S.D.N.Y. 1973), memorandum opinion and consent decree 72 Civ. 4002 (Aug. 29, 1974), cases requiring that programs be implemented for non-English speaking children to overcome their language handicap). The discriminatory aspects of the current New York City system also involve the de facto racially discriminatory public-private system, and the economically discriminatory aspects of that system.